

# EXHIBIT 14

Dondero - 5-28-2021

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

In re:	)	
	)	
HIGHLAND CAPITAL	)	Case No.
MANAGEMENT, LP,	)	19-34054 L.P.
	)	Chapter 11
Debtor,	)	
-----	)	
HIGHLAND CAPITAL MANAGEMENT,	)	
LP,	)	
	)	
Plaintiff,	)	Adversary No.
	)	21-03003-sgi
vs.	)	
	)	
JAMES D. DONDERO,	)	
	)	
Defendant.	)	

REMOTE DEPOSITION OF

JAMES DONDERO

Pages 103 - 282

Dallas, Texas

Friday, 28th day of May, 2021

Job No. 194690

Reported by:

Daniel J. Skur, Notary Public and CSR

Dondero - 5-28-2021

28th day of May, 2021

9:33 a.m. - 1:59 p.m.

Remote Deposition of JAMES DONDERO,

located in Dallas, Texas, before Daniel J.

Skur, Notary Public and Certified Shorthand

Reporter in and for the State of Texas

located in Waxahachie, Texas.

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A P P E A R A N C E S:

Pachulski Stang Ziehl & Jones  
Attorney(s) for Debtor  
780 Third Avenue

New York, New York 10017

BY: John Morris, Esq.

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Stinson  
Attorney(s) for The Witness  
3102 Oak Lawn Avenue

Dallas, Texas 75219

BY: Deborah Deitsch-Perez

Michael Aigen, Esq.

Paul Lackey, Esq.

Sidley Austin  
Attorney(s) for The Committee  
2021 McKinney Avenue

Dallas, Texas 75201

BY: Paige Montgomery, Esq.

ALSO PRESENT:

Davor Rukavina, NexPoint

La Asia Canty

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IT IS HEREBY STIPULATED AND AGREED  
by and between the attorneys for the respective  
parties herein, that filing and sealing be and  
the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED  
that all objections, except as to the form of  
the question, shall be reserved to the  
time of the trial.

IT IS FURTHER STIPULATED AND AGREED  
that the within deposition may be sworn to and  
signed before any officer authorized to  
administer an oath, with the same force and  
effect as if signed and sworn to before the  
Court.

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P R O C E E D I N G S

REMOTE ORAL DEPOSITION OF

JAMES DONDERO

(REPORTER NOTE: This deposition is  
being conducted remotely in accordance with  
the Current Emergency Order regarding the  
COVID-19 State of Disaster.

Today's date is the 28th day of  
May, 2021. The time is 9:33 a.m. Daylight  
Savings Time. The witness is located in  
Dallas, Texas.)

JAMES DONDERO,

having been duly cautioned and sworn to tell  
the truth, the whole truth and nothing but the  
truth, testified as follows:

(9:33 A.M.)

EXAMINATION

BY MR. MORRIS:

Q. Good morning, Mr. Dondero.

A. Morning.

Q. It's John Morris, again, from  
Pachulski on behalf of the debtor. We're here  
for your deposition today.

Do you understand that?

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2 A. Yes.

3 Q. Okay. We've done this a few times,  
4 so I'm going to kind of cut to the chase; but I  
5 do want to remind you that we're going to be  
6 looking at a number of documents today.

7 And because of the difficulty  
8 sometimes of doing this on a Zoom or by video,  
9 if, at any time, you believe you need to see  
10 other portions of the document, please let me  
11 know that. Okay?

12 A. Sure.

13 Q. Okay.

14 MR. MORRIS: Can we put up the first  
15 exhibit, please?

16 (Exhibit 1 introduced.)

17 BY MR. MORRIS:

18 Q. Okay. This is a document that's got  
19 a title, "Promissory Note." It's dated  
20 February 2, 2018, and the amount of the note is  
21 \$3,825,000.

22 Do you see that?

23 A. Yes.

24 MR. MORRIS: Can we just go to the  
25 signature line, please?

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2 BY MR. MORRIS:

3 Q. Is that your signature, sir?

4 A. I believe that's my assistant on my  
5 behalf.

6 Q. Did you authorize --  
7 (Audio distortion.)

8 A. I'm sorry?

9 BY MR. MORRIS:

10 Q. I don't want to step on your words.  
11 Were you finished with your answer?

12 MS. DEITSCH-PEREZ: Yeah. Can  
13 you -- yeah, can you ask it again?

14 MR. MORRIS: Sure.

15 BY MR. MORRIS:

16 Q. Is that your signature, sir?

17 A. Yes, for -- yes.

18 MR. MORRIS: Can we go back to the  
19 top of the document?

20 BY MR. MORRIS:

21 Q. And was this document signed on or  
22 around February 2, 2018?

23 A. Yes.

24 Q. Did you receive \$3,825,000 from the  
25 debtor on or around February 2nd, 2018?



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2           A.     I -- I believe so. I don't have  
3     direct awareness, but I believe so.

4           Q.     Okay. And did you sign this  
5     promissory note in exchange for that cash that  
6     you believe you received?

7           A.     Yes.

8           Q.     Okay. Are you familiar with the  
9     term "demand note"?

10          A.     Yes.

11          Q.     Can you describe for me your  
12     understanding of what a demand note is?

13          A.     It's a note that's -- maturity is  
14     defined by the term "demand" versus a -- a  
15     stipulated date.

16          Q.     And if we look down to paragraph 2,  
17     at the time that you signed this document on  
18     February 2, 2018, did you understand, based on  
19     paragraph 2, that you were signing a demand  
20     note, as you've characterized it?

21          A.     Yes.

22          Q.     Okay.

23                   MR. MORRIS: Can we go back to the  
24     top of the document?

25     BY MR. MORRIS:

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Q. Is it fair to say that under this demand note, you promised to pay Highland Capital Management, L.P., the sum of \$3,825,000?

A. Yes.

Q. Okay. And at the time that you signed this document on February 2nd, 2018, did you intend to repay to Highland Capital Management, L.P., \$3,825,000 plus interest?

A. Yes.

Q. And at the time you signed this document, did you intend to repay the principal amount plus interest upon demand by HCMLP?

A. Whatever was appropriate to pay, what hadn't been paid if it -- if it had -- yeah, if it had -- whatever the terms are, the terms are.

Q. Okay. Did you read the promissory note before you signed it?

A. No.

Q. Is there anything about the promissory note today that you don't understand?

A. I haven't looked at it closely. I'm

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aware of it but -- you know, but I'm not aware.  
I haven't looked at it closely.

Q. Well, but you do know that the  
debtor has sued you to collect on this note,  
right?

A. Yes.

Q. Okay. And can you identify anything  
in this note today that you don't understand?

MS. DEITSCH-PEREZ: Object to the  
form.

A. Again, I don't want to make any  
legal interpretation or analysis of the  
contract.

BY MR. MORRIS:

Q. And I appreciate that.

And to be clear, I'm not asking you  
for any legal opinion or any legal analysis.  
I'm asking for facts.

As a factual matter, as a layperson,  
is there anything about this note today that  
you do not understand?

MS. DEITSCH-PEREZ: Object, no  
foundation.

A. And I can't say.

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2 BY MR. MORRIS:

3 Q. Okay. You're not aware of anything;  
4 is that fair?

5 MS. DEITSCH-PEREZ: Object, no  
6 foundation.

7 A. No. I'm saying I can't give an  
8 opinion.

9 BY MR. MORRIS:

10 Q. All right. I'll try one more time a  
11 slightly different way.

12 Can you identify any language in  
13 this promissory note that you, as the maker of  
14 the note and as a layperson, as a matter of  
15 fact, do not understand?

16 MS. DEITSCH-PEREZ: Objection, no  
17 foundation.

18 A. I -- I don't have -- I haven't  
19 reviewed it. I don't have a comment.

20 BY MR. MORRIS:

21 Q. At the time that you signed this,  
22 did you believe that this note reflected all of  
23 the terms and conditions with respect to the  
24 subject matter of the note?

25 MS. DEITSCH-PEREZ: Object, no

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2 foundation.

3 A. Yeah, I believe largely at the time,  
4 yes.

5 BY MR. MORRIS:

6 Q. In fact, if we go to paragraph 8,  
7 there's -- the last sentence is what's commonly  
8 referred to as an integration clause.

9 Do you see that last sentence of  
10 paragraph 8?

11 A. Yes.

12 Q. And did you agree with the debtor  
13 that the terms and provisions of the paragraph  
14 control and supersede every other provision of  
15 all other agreements between the payee and the  
16 maker in conflict herewith?

17 A. I see it. I mean, I read it. But  
18 what's -- what's the question?

19 Q. Withdrawn. It's okay. It speaks  
20 for itself.

21 You were the CEO of Highland at the  
22 time that you signed the note, correct?

23 A. Yes.

24 Q. And you controlled Highland at that  
25 time; is that fair?

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2 A. Yes.

3 Q. And at the time that you signed the  
4 note, the Redeemer Committee had not yet  
5 obtained a judgment against Highland Capital  
6 Management or anybody else; is that -- any  
7 other Highland entity; is that right?

8 A. I -- and I don't recall the -- the  
9 timing --

10 Q. Okay.

11 A. -- of their arbitration award or...

12 Q. Let me ask you to just go back in  
13 time, February of 2018. Do you recall having  
14 any concern in February 2018 that you might  
15 lose control of Highland?

16 A. No, I don't recall.

17 Q. While you were the CEO, did  
18 Highland -- withdrawn.

19 I'm going to refer to Highland  
20 Capital Management, L.P., variously today as  
21 either the debtor, Highland, or HCMLP; is that  
22 fair?

23 MS. DEITSCH-PEREZ: John, I think  
24 it's a little confusing if you do that. I  
25 mean, if you could refer to the

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post-bankruptcy entity as "the debtor" and,  
when you're talking about prebankruptcy,  
call it "Highland" or "HCM"?

MR. MORRIS: Okay.

MS. DEITSCH-PEREZ: I -- I think  
that would probably be clearer.

MR. MORRIS: That's fair. I'll try  
and do just that. Thank you very much.

BY MR. MORRIS:

Q. While you were the CEO of HCMLP, did  
HCMLP, prepare, in the ordinary course of  
business, a document called a "Monthly  
Reporting Package"?

A. I don't know -- I don't know the  
name -- I don't know that name in particular,  
but we did do monthly financials, I believe.

Q. Okay. And did you personally review  
the monthly financials each month that they  
were prepared?

A. No.

Q. Do you know who was responsible for  
preparing the monthly financials?

A. It would have been in accounting. I  
don't know who in accounting.

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2 Q. Was Frank Waterhouse responsible for  
3 preparing the Monthly Operating Reports?

4 A. He was our CFO. So everything,  
5 ultimately, in accounting reported up through  
6 him, but I don't know his involvement in that  
7 report.

8 Q. Can you identify any person who was  
9 responsible for preparing the Monthly Operating  
10 Reports for HCMLP, while you were the CEO?

11 A. No.

12 Q. Do you know what the Monthly  
13 Operating Reports were used for?

14 Withdrawn.

15 What was the purpose of preparing  
16 Monthly Operating Reports, if you know?

17 A. I don't know.

18 Q. Were they delivered to you each  
19 month, even if you didn't read them?

20 A. I don't believe so. Not physically,  
21 that I can remember. If there was an email, I  
22 don't remember.

23 Q. Did you ever discuss any of the  
24 Monthly Operating Reports with Mr. Waterhouse?

25 A. I can't -- I can't recall.



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MS. DEITSCH-PEREZ: I mean, do you mean the report specifically or Highland's financials generally?

MR. MORRIS: The Monthly Operating Reports that we're talking about.

And I would appreciate it, Deborah, if you have an objection, just say "Object to the form of the question"; and I'll do the best I can to -- to try to understand what you're saying, but I'd prefer no speaking objections.

BY MR. MORRIS:

Q. Do you recall ever speaking with anybody in accounting with respect to any Monthly Operating Report that they prepared?

A. I don't recall.

Q. Okay.

MR. MORRIS: Can we put up Exhibit Number 2, please?

(Exhibit 2 introduced.)

BY MR. MORRIS:

Q. Looking at the first page, sir, does this appear to be what we've been describing as a Monthly Operating Report for Highland Capital

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2 Management?

3 A. It says "Operating Results." I -- I  
4 have no recollection of seeing this cover sheet  
5 before.

6 Q. Okay.

7 MR. MORRIS: Can we go to the second  
8 page, please?

9 Stop right there.

10 BY MR. MORRIS:

11 Q. This is the second page of the  
12 Operating Results for February 2018, and it's  
13 headed "Significant Items Impacting HCMLP's  
14 Balance Sheet."

15 Do you see that?

16 A. Yes.

17 Q. Do you know whether the accounting  
18 department was charged with the responsibility  
19 of identifying on a monthly basis significant  
20 items that would impact Highland's balance  
21 sheet?

22 A. I have no particular awareness.

23 Q. Okay. Do you see at the bottom  
24 under the title "Other," it's \$3.8 million and  
25 it's referred to as "Partner Loan"?

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2 A. Yes.

3 Q. Do you have an understanding that  
4 that 3.8 million-dollar partner loan refers to  
5 what we just looked at as Exhibit 1, the  
6 promissory note?

7 MS. DEITSCH-PEREZ: Object, no  
8 foundation.

9 A. I have -- I have no particular  
10 awareness other than the amounts are similar.  
11 BY MR. MORRIS:

12 Q. And -- and do you know whether  
13 Highland recorded the promissory note as an  
14 asset on its balance sheet as of February 2018?

15 A. I -- I don't know.

16 Q. So, you signed a promissory note for  
17 \$3.8 million in February 2018; and as the CEO,  
18 you don't know if Highland carried that  
19 promissory note on its balance sheet. Do I  
20 have that right?

21 A. I'm saying I don't have particular  
22 knowledge. I -- I am a CPA and GAAP accounting  
23 would suggest that it was, but I don't have --  
24 I don't have particular knowledge on how it was  
25 accounted for.

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2 Q. Okay. Later in the year, you signed  
3 two more promissory notes in favor of Highland;  
4 is that right?

5 A. I -- I believe so. Yeah.

6 MR. MORRIS: Can you put up  
7 Exhibit 3, please?

8 (Exhibit 3 introduced.)

9 BY MR. MORRIS:

10 Q. And can we go to the signature line?  
11 (Scrolling.)

12 BY MR. MORRIS:

13 Q. Is that your signature, sir?

14 A. Yes.

15 MR. MORRIS: Go to the top of the  
16 page.

17 BY MR. MORRIS:

18 Q. Did you sign a promissory note on or  
19 about August 1st, 2018, in the amount of  
20 \$2.5 million in favor of Highland?

21 A. Yes.

22 Q. Did you receive from Highland  
23 Capital Management, L.P., \$2.5 million on or  
24 about August 1st, 2018?

25 A. I believe so.

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Q. And did you, in fact, sign this promissory note in exchange for that \$2.5 million?

A. Yes.

MR. MORRIS: Can we go down to paragraph 2, please?

(Scrolling.)

BY MR. MORRIS:

Q. Looking at paragraph 2, would you characterize this as a demand note, using the understanding that you described earlier today?

A. Yes.

Q. And -- and this note, like the other, because they're demand notes, there's no conditions for -- for the demand, is that right, at least as drafted.

Withdrawn. That wasn't a great question.

Were these unconditional demand notes, these two documents that we've looked at?

A. I -- I don't want to make a legal interpretation.

Q. I'm just asking for your

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understanding as the person who signed the note. At the time you signed it, at that time, did you understand that there were any conditions placed on Highland's ability to make a demand?

A. I don't know.

Q. Okay. Did you understand that under these demand notes, that if you defaulted, all amounts that were due and payable would accelerate?

MS. DEITSCH-PEREZ: Object to the form.

A. I don't know.

BY MR. MORRIS:

Q. Did you read this -- did you read this promissory note before you signed it?

A. No.

Q. Do you know whose idea it was to give you the principal amount of these notes and for you to execute the promissory notes in exchange?

A. I -- again, I think it's proper accounting consistent with what we've done with -- we've done historically -- or Highland

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did historically and what Highland did historically for other employees.

Q. Okay. I'm not asking about that. I'm asking just about you and the two notes that we've looked at so far: Who made the decision at the respective moments in time to transfer to you the principal amount of the notes and for you to execute the notes?

A. I believe it would have come from accounting.

Q. Who decided -- who decided the principal amount of the note?

A. I don't know. It would -- I don't know.

Q. Did you ask to borrow money? Did you ask the folks in accounting for a loan from Highland in the principal amount of the notes and request that they document it accordingly?

A. No.

Q. Who was your assistant at this time?

A. My accounting assistant at this time was Melissa Schroth.

Q. And was she authorized to sign these

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2       notes on your behalf?

3           A.       I -- that -- sometimes she signs  
4       stuff. I don't know on this. I'm -- I'm not  
5       denying that it's a bona fide -- signed by me.  
6       Or if it wasn't signed by me, it was --  
7       somebody who was authorized signed it on my  
8       behalf.

9           Q.       Okay. I appreciate that. Thank  
10       you.

11                   Is there anything about --  
12       withdrawn.

13                   Was there anything about this  
14       promissory note that you didn't understand at  
15       the time that either you signed it or it was  
16       signed on your behalf?

17                   MS. DEITSCH-PEREZ: Object, no  
18       foundation.

19           A.       Again, I didn't evaluate it  
20       carefully, and I didn't actually even read it.

21       BY MR. MORRIS:

22           Q.       Okay. As you sit here today, can  
23       you identify anything in this document that you  
24       do not understand?

25                   MS. DEITSCH-PEREZ: Object, no



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2 foundation.

3 A. I -- I don't want to make a legal  
4 interpretation on a legal document.

5 BY MR. MORRIS:

6 Q. I appreciate that, but I have no  
7 ability to ask any follow-up questions. So let  
8 me ask it just a different way: Is there  
9 anything about this document that you don't  
10 understand today?

11 MS. DEITSCH-PEREZ: Object, no  
12 foundation.

13 BY MR. MORRIS:

14 Q. You can answer.

15 A. I don't know.

16 Q. Okay. Do you understand that if  
17 there was something that -- that you did not  
18 understand, you have an obligation to tell me  
19 that right now?

20 MS. DEITSCH-PEREZ: Object, no  
21 foundation.

22 A. I -- I -- the answer is the same. I  
23 don't know.

24 MR. MORRIS: Can we go to Exhibit  
25 Number 4, please?

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2 (Exhibit 4 introduced.)

3 MR. MORRIS: Can we go to the  
4 signature line when you get there?

5 BY MR. MORRIS:

6 Q. Is that your signature, sir?

7 A. Yes.

8 Q. And did you sign this document or --  
9 or -- let me ask two questions first. Did you  
10 personally sign this document?

11 A. And again, it was either me or  
12 someone with my approval, but that doesn't look  
13 like my typical signature, but it's close.

14 Q. Okay. And whoever signed it had the  
15 authority from you to sign on your behalf; is  
16 that fair?

17 A. Yes.

18 Q. Okay.

19 MR. MORRIS: Can we go to the top of  
20 the page, please?

21 BY MR. MORRIS:

22 Q. And did you or somebody acting on  
23 your behalf sign this promissory note on  
24 August 13, 2018, in the amount of \$2.5 million?

25 A. Yes.

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2 MR. MORRIS: Can we go to

3 paragraph 2, please?

4 BY MR. MORRIS:

5 Q. Looking at paragraph 2 and the term  
6 contained therein, would you agree that this is  
7 a demand note, using the definition that you  
8 supplied earlier today?

9 A. Yes.

10 Q. At the time that this note was  
11 signed on your behalf, did you intend to comply  
12 with the terms of this note?

13 A. Yes.

14 Q. At the time that this note was  
15 signed on your behalf, did you intend to pay  
16 all unpaid principal and accrued, but unpaid,  
17 interest upon demand of the payee?

18 A. Let me say I -- I expected to honor  
19 the agreement. I don't know if I can answer  
20 that with regard to that one term.

21 Q. Well, I do just want to make sure  
22 that -- withdrawn.

23 You understood at the time you  
24 signed this document, or it was signed on your  
25 behalf, that it was a demand note, correct?

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2 A. That it was structured -- no. I  
3 think what I've testified or tried to testify  
4 to is that they are demand notes or they're  
5 written as demand notes. I didn't read them or  
6 pay attention at the time to the structure of  
7 the note.

8 Q. Okay. And as demand notes, you  
9 understood that any unpaid principal and  
10 interest would be due upon demand, correct?

11 A. Again, I don't want to make -- I  
12 don't want to make -- I don't want to affirm  
13 that statement. I would say I don't know  
14 because I don't want to -- I don't know the  
15 rest of the context of the rest of the note and  
16 how it all interplays.

17 Q. All right. Well, I'm happy to --  
18 to -- it's a very short document, so we can  
19 look at it for as long as you want, but I  
20 really need to know what -- what you, as the  
21 maker, understood when you signed the note. So  
22 I'm going to ask a very simple question, and I  
23 encourage you to -- to ask to see whatever  
24 portions of the document you want, okay?

25 When these three notes were signed

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by you or signed by someone you authorized to sign, what did you understand the payment terms to be?

A. I -- I didn't. I didn't have an understanding at the time.

Q. So -- but -- but you would agree that your intention was to comply with the terms of the note; is that fair?

A. In aggregate, yes.

Q. Okay.

MR. MORRIS: Go to Exhibit 5, please.

(Exhibit 5 introduced.)

BY MR. MORRIS:

Q. Is it your practice to sign documents or to have people sign documents on your behalf that you haven't read?

A. Yes.

Q. This is a document that's entitled "Operating Results" for August 2018. Do you see that?

A. Yes.

MR. MORRIS: And if we could just go to the second page.

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2 BY MR. MORRIS:

3 Q. Do you see under Significant Items  
4 Impacting Highland's bank -- balance sheet for  
5 August 2018 at the bottom, there's a reference  
6 to \$5 million in "partner loan." Do you see  
7 that?

8 A. Yes.

9 Q. Do you have an understanding as to  
10 whether or not that refers to the two  
11 2.5 million-dollar notes that we just looked at  
12 that were signed in August 2018?

13 A. I don't know.

14 Q. Do you have any recollection at  
15 all or -- withdrawn.

16 Were you personally referred to as a  
17 partner of Highland in August 2018?

18 A. I believe so.

19 Q. Are you aware of any partner loans  
20 that were made by Highland in August 2018 other  
21 than the two loans that we just looked at?

22 A. I don't know.

23 Q. You're not aware of any; is that  
24 fair?

25 MS. DEITSCH-PEREZ: Object, no

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2 foundation.

3 A. I don't know.

4 BY MR. MORRIS:

5 Q. There came a time when the debtor  
6 made demand on these three notes, right?

7 A. I don't know. I believe -- I don't  
8 know specifically, but I believe so.

9 MR. MORRIS: Can we put up  
10 Exhibit 6, please?

11 (Exhibit 6 introduced.)

12 BY MR. MORRIS:

13 Q. Do you see this is a -- it's a  
14 letter dated December 3rd, and it's addressed  
15 to you.

16 And if we scroll down a little bit,  
17 it's signed by Mr. Seery as the CEO and CRO of  
18 Highland Capital Management.

19 Do you see that?

20 A. Yes.

21 Q. Do you recall on or around  
22 December 3rd, 2020, the debtor made a demand  
23 for all outstanding principal and interest due  
24 under the three notes that we just looked at?

25 A. I -- I see the letter. I don't have

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a recollection.

Q. All right. Do you understand that in December 2020, the debtor made a demand for payment of all unpaid principal and interest under the three notes that we just looked at, even if you don't remember this particular letter?

A. I'm sorry. What was -- yeah, I accept the letter, and I'll accept that it was delivered.

What -- what's your question, please?

Q. I'm trying to just get -- get your understanding.

And I think you testified that you don't recall seeing this letter. Do I have that right?

A. That's correct.

Q. Okay. So, putting the letter to the side, did you become aware in December 2020 that the debtor had demanded that you pay all unpaid principal and interest due under the three promissory notes that we just looked at?

A. Again, just generally.



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2 Q. Did you make any payment to the  
3 debtor in response to that demand?

4 A. No.

5 Q. Did you or anybody acting on your  
6 behalf respond to the debtor's demand in any  
7 way?

8 MS. DEITSCH-PEREZ: Object to the  
9 form.

10 BY MR. MORRIS:

11 Q. Withdrawn. That's fair.

12 Let me ask a different question.

13 Did you or anybody acting on your  
14 behalf respond to the debtor's demand at any  
15 time prior to the commencement of this  
16 adversary proceeding?

17 MS. DEITSCH-PEREZ: Object to the  
18 form.

19 A. Can you repeat it one more time?

20 BY MR. MORRIS:

21 Q. Sure. Did you or anybody acting on  
22 your behalf respond to the debtor's demand for  
23 payment of all unpaid principal and interest at  
24 any time prior to the commencement of this  
25 lawsuit?

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2 MS. DEITSCH-PEREZ: Object to the  
3 form.

4 A. I want -- I want to answer that  
5 question as -- as follows: I'm not saying on  
6 my behalf, but I know there was a lot of  
7 conversations with lawyers and business people  
8 around the notes and their shared services and  
9 the split and the overpayments to Highland and  
10 -- trying to reach some amicable resolution of  
11 shared services -- in fact, the entire  
12 estate -- but I don't -- I don't -- I don't  
13 recall specifically or -- what lawyers or what  
14 business people were saying what to the debtor,  
15 but I -- I know there were a lot of  
16 conversations that were going on.

17 BY MR. MORRIS:

18 Q. Can you identify any aspect of any  
19 of the conversations you just described that  
20 pertained to the debtor's demand for payment of  
21 all unpaid principal and interest on the three  
22 notes?

23 A. Not -- not specifically.

24 Q. Okay. There came a time when an  
25 answer to the debtor's complaint was filed on

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2       your behalf.

3                               Do you remember that?

4           A.       No, but I'm willing to be refreshed.

5           Q.       Okay.

6                               MR. MORRIS:   Can we please put up  
7       Exhibit 7?

8                               (Exhibit 7 introduced.)

9                               MR. MORRIS:   And if we could just  
10       scroll down to the title.

11       BY MR. MORRIS:

12           Q.       Do you see that this document is  
13       called "Defendant James Dondero's Original  
14       Answer"?

15           A.       Yes.

16           Q.       And if we scroll back to the top of  
17       the document, do you see that it was filed on  
18       the docket on March 16, 2021?

19           A.       Yes.

20           Q.       Did you personally read this  
21       document before it was filed?

22           A.       No.

23           Q.       Did you have an understanding as to  
24       the contents of the document before it was  
25       filed?

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2 A. No.

3 Q. Did you authorize Bonds Ellis to  
4 file this document on your behalf?

5 A. Not specifically that I remember.

6 Q. Did you know on or around March 16,  
7 2021, that Bonds Ellis had filed "Defendant  
8 James Dondero's Original Answer" in this  
9 adversary proceeding?

10 A. Not specifically. There's a lot  
11 going on.

12 Q. As you sit here right now--and,  
13 again, happy to page through the document--can  
14 you tell me whether you have ever read  
15 Defendant James Dondero's Original Answer?

16 A. Not that I recall.

17 Q. So, as of -- and that's true as of  
18 today; is that fair?

19 A. Can we scroll through this, please?

20 Q. Yes. Just let us know if you want  
21 us to slow down or speed up.

22 MS. DEITSCH-PEREZ: Yeah, just go  
23 slow enough so he could sort of eyeball  
24 each page.

25 MR. MORRIS: You bet.

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2 THE WITNESS: Yep, keep going.

3 (Scrolling.)

4 THE WITNESS: Hold on. Could you go  
5 back a little bit, please? It just goes --  
6 stop right there.

7 A. I do remember paragraph 5. I think  
8 that was recently tried last week or so, but I  
9 think that was always the -- always the way it  
10 was described to me by lawyers, was that these  
11 notes shouldn't be in her Court.

12 MS. DEITSCH-PEREZ: Okay. And I'll  
13 just -- I'll just caution the witness to  
14 not disclose communications with counsel,  
15 but it's okay if something catches your eye  
16 and you, at least, remember that part, say,  
17 "Oh, yeah, I remember that one," but  
18 without going into details as to any  
19 communications with your lawyers.

20 MR. MORRIS: And -- and that's fine.  
21 That's fine. I'm certainly not looking for  
22 that.

23 BY MR. MORRIS:

24 Q. The question is really simple: Have  
25 you ever seen this document before and --

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2                   MS. DEITSCH-PEREZ: John, I think he  
3                   said he needs to scroll through it to see  
4                   if anything --

5                   MR. MORRIS: I understand.

6                   MS. DEITSCH-PEREZ: -- triggers a  
7                   recollection. He just said he's looking at  
8                   5, yeah, that looks familiar. If you want  
9                   to keep going, we could find out if there  
10                  are any others that -- that look familiar  
11                  to him.

12                  THE WITNESS: Let's keep going.

13                  (Scrolling.)

14                  MS. DEITSCH-PEREZ: You'll agree  
15                  that most answers are not particularly  
16                  memorable when they say things like --

17                  (Simultaneous conversation.)

18                  MR. MORRIS: Please stop. Please  
19                  stop. Please stop talking. Please stop  
20                  talking. It's inappropriate.

21                  MS. DEITSCH-PEREZ: I -- I know.  
22                  It's your deposition, and you could do all  
23                  this stuff, but --

24                  (Simultaneous conversation.)

25                  MR. MORRIS: Please stop talking.

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2 Please stop talking.

3 MS. DEITSCH-PEREZ: I hear you.

4 THE WITNESS: Keep -- keep going.

5 (Scrolling.)

6 THE WITNESS: Okay. Keep going.

7 (Scrolling.)

8 THE WITNESS: It looks to me like --

9 MS. DEITSCH-PEREZ: Keep -- let --

10 let him go through the whole thing.

11 THE WITNESS: Sure. Keep going.

12 (Scrolling.)

13 THE WITNESS: Okay. Is that it?

14 MR. MORRIS: Yes.

15 THE WITNESS: Okay.

16 BY MR. MORRIS:

17 Q. Do you recall ever seeing this  
18 document before, sir?

19 A. The -- the substance of it, again,  
20 some of it I -- I remember, and the -- there --  
21 it strikes me as a legal argument and defenses  
22 regarding the payment of the notes, and I do  
23 remember a lot of conversation regarding it  
24 being -- it should be outside -- it should be  
25 in a different court, and it should be a jury

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trial. And those are two main points in here,  
but it seems like there are a bunch of other  
defenses listed.

Q. Okay.

A. And I have -- and I have an  
awareness of it, but I'm not a lawyer.

Q. I appreciate that you're not a  
lawyer; but looking at the document, does that  
refresh your recollection that you read and  
reviewed this document before it was filed on  
your behalf?

A. I have -- I have an awareness of it,  
but I wouldn't -- I wouldn't have been deeply  
involved in its drafting or detailed approval.

MR. MORRIS: Can we go to page 6 of  
8, please?

BY MR. MORRIS:

Q. And directing your attention to  
paragraph 40, do you see it says, as the first  
affirmative defense, quote, "Defendant asserts  
that plaintiff's claims should be barred  
because it was previously agreed by plaintiff  
that plaintiff would not collect on the notes."

Do you see that?



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2 A. Yes.

3 Q. Okay. Have I read that accurately?

4 A. Yes.

5 Q. Did the plaintiff ever agree that  
6 plaintiff would not collect on the notes?

7 A. Yes.

8 Q. You subsequently amended this  
9 defense; isn't that right?

10 A. I believe so.

11 Q. And do you understand that you  
12 amended it to add a few words relating to  
13 conditions subsequent?

14 A. I -- I -- other than for  
15 clarification and completeness, the -- it was  
16 amended. I don't have specific knowledge of  
17 what was amended.

18 Q. Okay. When did the plaintiff agree  
19 that the plaintiff would not collect on the  
20 notes?

21 A. Boy, that was early on in the case.  
22 Every proposal, every POT plan, every  
23 settlement discussion never included value for  
24 notes.

25 Q. All right. I'm going to ask the

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question again: When did the plaintiff agree that it would not collect on the notes?

MS. DEITSCH-PEREZ: Are you talking about the subsequent agreements in the next pleading?

MR. MORRIS: I'm asking for an answer as to when the agreement referred to in paragraph 40 was entered into.

A. First quarter of -- first quarter of 2020.

BY MR. MORRIS:

Q. So it was after the petition date?

MS. DEITSCH-PEREZ: Are you asking about the 2018 notes?

MR. MORRIS: Yes, those are defined to be "the notes."

BY MR. MORRIS:

Q. So -- so did -- this is your defense.

Is it your position, Mr. Dondero, that in the first quarter of 2020, the plaintiff agreed that it would not collect on the notes?

A. I -- I -- I don't -- I want to leave

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my testimony as what I just said a minute ago.

The notes were never part of any POT plan or suggested POT plan or suggested grand bargain or suggested as having any value starting in the first quarter of '20 -- or most of the year, I believe, until the -- towards the end of the year.

Q. All right. Was there ever an agreement between you and the plaintiff that the plaintiff would not collect on the notes if there was no grand bargain or no POT plan?

A. Yeah, the -- I'm sorry. Repeat again.

Q. Who entered the agreement on behalf of the debtor that the plaintiff would not collect on the notes?

A. (Indiscernible speech.)

Agreement on -- you know, the -- the -- you know the -- I think I'm looking at this question from a perspective of the negotiation, you know, at that time and not including the subsequent conditions that were overlaid on the notes, I guess. So I guess it's a combination of both.

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Q. I'm asking you to identify the person who acted on behalf of the debtor in reaching the agreement with you that the plaintiff would not collect on the notes. Who did that?

MS. DEITSCH-PEREZ: John, I think the problem is you're referring to the debtor, so he's looking at post-bankruptcy. You might ask it two questions, one --

MR. MORRIS: No. Please stop. Please stop. Please stop.

(Simultaneous conversation.)

MS. DEITSCH-PEREZ: You agreed to that condition. You agreed to distinguish between the debtor --

(Simultaneous conversation.)

MR. MORRIS: Deborah --

MS. DEITSCH-PEREZ. -- bankruptcy --

MR. MORRIS: Deborah --

(Simultaneous conversation.)

THE REPORTER: I can't -- I can't write two people at the same time.

MR. MORRIS: This is so improper. He has --

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2 MS. DEITSCH-PEREZ: It is not. You  
3 agreed --

4 MR. MORRIS: Please let me finish.  
5 Please let me finish.

6 He has described the conversations  
7 as taking place in 2020. I should be  
8 referring to the debtor. He is  
9 describing --

10 MS. DEITSCH-PEREZ: Right.

11 MR. MORRIS: -- the context --

12 MS. DEITSCH-PEREZ: But if you want  
13 to know about something that happened  
14 before bankruptcy, ask about Highland.

15 MR. MORRIS: But I'm not. I  
16 don't -- please stop interrupting.

17 MS. DEITSCH-PEREZ: It's your  
18 deposition. If you want a muddy record, be  
19 my guest.

20 MR. MORRIS: I would really  
21 appreciate it. I think I know what I'm  
22 doing.

23 BY MR. MORRIS:

24 Q. Mr. Dondero, who, on behalf of the  
25 debtor, during these conversations about a

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grand bargain and a POT plan told you or entered into the agreement that the plaintiff would not collect on the notes?

A. I -- I -- during the bankruptcy, we're talking about, right?

Q. I'm just following up on your statement that the conversation -- that the agreement was entered into in the first quarter of 2020.

Do I have that right, or is that wrong?

A. Well --

Q. Let's start again. Let's start again.

This affirmative defense refers to an agreement. Do you see that?

A. Yes.

Q. This is your affirmative defense; isn't that correct?

A. Yes.

Q. And according to this affirmative defense, the agreement was that the plaintiff would not collect on the notes. Do I have that right?

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2 A. Yes.

3 Q. Let's start with: When was that  
4 agreement entered into?

5 A. Okay. I'm going to have to parse,  
6 and I'm going to have to answer your question  
7 as accurately as I can.

8 The subsequent conditions for  
9 forgiveness of the notes were established  
10 during a comp period in early 2019 for these  
11 notes that were drafted in '18.

12 And the agreement was reached  
13 with -- I believe it's a majority of, whatever,  
14 the Class A holders in the fourth amended  
15 Highland Capital partnership -- partnership  
16 agreement. And that's what set up the  
17 subsequent conditions and the ability for the  
18 loans to be forgiven.

19 When you get into bankruptcy,  
20 whether it was Seery, the independent board, or  
21 whoever, no one ever put any value nor was it  
22 ever included in any -- were the notes included  
23 in any settlement discussions, period.

24 Q. All right. So, it's your testimony  
25 that the debtor in settlement negotiations

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2       never, ever, ever asked for or demanded the  
3       repayment of any unpaid principal or interest  
4       under these three notes?

5                   That's your sworn testimony?

6           A.       No.

7           Q.       So how did I get that wrong, then?

8           A.       Well, a few minutes ago we went over  
9       a letter from the debtor making a demand, but  
10      that was, I believe, this year or -- yeah, I  
11      believe that was this year or the end of '20.

12                  What I'm saying is through '20, the  
13      full year of '20 when we were trying to work on  
14      a POT plan or global settlement before Seery  
15      betrayed the estate, we were -- we never --  
16      there was never value assigned to the notes.

17          Q.       And you never offered to make any  
18      payment of any kind, principal or interest, on  
19      any of the notes in connection with any  
20      proposal you ever made as part of the grand  
21      bargain or POT plan; is that right?

22          A.       I think -- I believe on the -- not  
23      through 2020. I'll say that.

24                  By the time 2021 came along, on the  
25      eve of trial when I sent over a capitulation



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offer -- I think it was even titled that -- I think I threw more money than everybody deserved or was entitled to, to try and resolve it. And implicitly, there was -- because it was more than everybody was entitled to, I think implicitly it included value for the notes.

Q. And is it your testimony that at no time prior to the delivery of the demand letter did the debtor ever make an offer to you or -- of any kind that included any repayment of any principal or interest due under the three notes?

A. I'm willing to be refreshed, but not that I recall.

Q. Okay. And is it your testimony that anybody acting on behalf of the debtor ever agreed not to collect on the notes?

A. I'm sorry. Repeat that one more time, just --

Q. Is it your testimony -- withdrawn. Did anybody acting on behalf of the debtor ever agree with you that it would not collect on the notes, irrespective of whether

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2 there was a settlement?

3 MS. DEITSCH-PEREZ: Object to form.

4 A. Yeah. Again, that was my  
5 understanding through 2020.

6 BY MR. MORRIS:

7 Q. Do you have --

8 THE WITNESS: Let's -- let's --  
9 before the next question, let's take a  
10 ten-minute break, ten-minute bathroom  
11 break, please.

12 MR. MORRIS: No problem.

13 MS. DEITSCH-PEREZ: Okay. We've  
14 been going an hour, so we'll come back  
15 at -- 10:30, come back at 10:40?

16 MR. MORRIS: That's fine. Thank  
17 you.

18 (Recess held.)

19 BY MR. MORRIS:

20 Q. Is the agreement that you're  
21 referring to and that's referred to in  
22 paragraph 40, is that reflected in any document  
23 that you're aware of?

24 A. Not that I'm aware of.

25 Q. And I believe you mentioned -- and

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2 we'll talk about this more later, but the part  
3 about the subsequent conditions or the  
4 conditions subsequent, that was the agreement  
5 that was entered into, did you say the -- in  
6 part -- as part of a compensation committee  
7 meeting?

8 A. As part of our compensation process  
9 in -- early in 2019.

10 Q. Okay. And when you say "early  
11 2019," can you -- do you recall what month?

12 A. In January/February.

13 Q. So, it's your testimony that in  
14 January or February 2019, you and the debtor  
15 reached the agreement that's referred to in  
16 paragraph 40 as subsequently amended by your  
17 amended answer; is that right?

18 MS. DEITSCH-PEREZ: Object to the  
19 form.

20 John, I thought you were going to  
21 agree to call Highland Highland --

22 MR. MORRIS: That's fine. That's  
23 fine.

24 (Simultaneous conversation.)

25 MS. DEITSCH-PEREZ: -- thereafter.

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MR. MORRIS: That's fine. So, let me rephrase the question.

BY MR. MORRIS:

Q. I just want to make sure that I have this right, Mr. Dondero. It's your recollection that in January or February of 2019, you reached an agreement with Highland that's reflected in paragraph 40 as subsequently amended to include the phrase "conditions subsequent." Do I have that right?

A. I gave my testimony. I don't know if -- I don't want to opine on the legal document and whether the legal document captures it there or somewhere else, but my -- my recollection regarding pre-bankruptcy and post-bankruptcy is as I -- as I stated already.

Q. Let me -- let me try this a different way.

We looked at the three promissory notes. Were those promissory notes ever amended, to the best of your knowledge?

A. No, not that -- I mean, not -- not in writing.

Q. Okay.

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2 A. They were amended -- they were  
3 amended -- they were amended verbally.

4 Q. Okay. And did that verbal agreement  
5 take place in January or February 2019?

6 A. Yes.

7 Q. Was there any verbal agreement  
8 related to the notes that occurred other than  
9 the one you're referring to in January or  
10 February 2019?

11 A. Well, I gave my testimony during  
12 bankruptcy in 2020, the substance of all  
13 negotiations never assigned value to the -- the  
14 notes.

15 Q. But you never reached an agreement  
16 with the debtor on -- on any settlement that  
17 would include either payment for or forgiveness  
18 of the notes; is that fair?

19 You never reached an agreement?

20 A. Not in writing, but I believe we  
21 were operating with an understanding that  
22 the -- weren't likely to have value to the  
23 estate.

24 MR. MORRIS: Okay. I move to  
25 strike, and I'll ask the question again.

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BY MR. MORRIS:

Q. Do you have any agreement with the debtor -- agreement with the debtor with respect to any of the three notes?

MS. DEITSCH-PEREZ: Object to the form.

A. I believe the debtor in bankruptcy inherits that subsequent condition agreements from the first quarter of 2019; and I believe in 2020, the debtor operated and participated and acted in a way all negotiations that suggested the notes had -- were unlikely to have any value to the estate.

MR. MORRIS: Okay. I move to strike.

BY MR. MORRIS:

Q. And I'd ask you to please listen carefully to my question and only answer the question that's asked.

Is there any agreement that pertains to the notes other than --

MS. DEITSCH-PEREZ: Objection, asked --

BY MR. MORRIS:

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2 Q. -- with --

3 A. Yeah, I'm going to stick with my  
4 same answer that I've given twice.

5 Q. I'm actually -- I'm actually asking  
6 a different question; and if you would let me  
7 finish, this would go a lot more smoothly.

8 Is there any agreement, written or  
9 verbal, between you and the debtor concerning  
10 the notes other than the verbal agreement that  
11 you contend was entered into in January and  
12 February 2019?

13 I don't want to know about  
14 operations or offers or settlement discussions.  
15 I want to know about agreements: Is there any  
16 agreement pertaining to the notes other than  
17 the verbal agreement entered into in January or  
18 February 2019?

19 MS. DEITSCH-PEREZ: Object to the  
20 form.

21 A. Yes.

22 BY MR. MORRIS:

23 Q. What other agreement exists?

24 A. The agreement between, I guess, me  
25 and to the extent other related parties that

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2 had notes with the debtor, beginning in the  
3 first quarter after the bankruptcy, that the  
4 notes were unlikely to have any value to the  
5 estate or have any value in settlement.

6 Q. Okay. I don't want to know about  
7 value. I want to know if there is an agreement  
8 not to collect.

9 So let me try and answer -- ask the  
10 question differently.

11 Other than the agreement that you  
12 assert was entered into in January or  
13 February 2019, did anybody acting on behalf of  
14 Highland or the debtor enter into any other  
15 agreement pursuant to which the debtor agreed  
16 not to collect on the notes?

17 A. I'm -- I'm going -- same answer:  
18 Implicitly, yes.

19 Q. Okay. Is that -- is that implicit  
20 agreement written down anywhere?

21 You know what? I'm going to move  
22 on, Mr. Dondero, and I look forward to the jury  
23 trial.

24 MR. MORRIS: Can we put up the next  
25 exhibit, Number 8?



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2 (Exhibit 8 introduced.)

3 BY MR. MORRIS:

4 Q. Did you --

5 MR. MORRIS: If we could scroll down  
6 a little bit.

7 BY MR. MORRIS:

8 Q. Are you aware that the debtor served  
9 discovery in connection with this action?

10 A. Not specifically.

11 Q. Do you see that these are your  
12 objections and responses to the debtor's  
13 requests for admission?

14 A. Yes.

15 Q. Have you ever seen this document  
16 before?

17 And we can scroll down, if you'd  
18 like.

19 MS. DEITSCH-PEREZ: Scroll through  
20 it, please.

21 THE WITNESS: Yeah, let's scroll  
22 through it.

23 (Scrolling.)

24 THE WITNESS: Can you keep going,  
25 please?

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2 MR. MORRIS: That's the end.

3 THE WITNESS: Okay.

4 BY MR. MORRIS:

5 Q. Have you ever seen this document  
6 before, sir?

7 A. I'm aware of it -- I mean, yes, but  
8 I don't remember -- ask whatever questions you  
9 want about it, and we'll go from there.

10 Q. Did you see this document before --  
11 before it was sent to my firm on April 28th,  
12 2021?

13 A. I mean, I'm sure I did and -- or I'm  
14 sure I did if I was supposed to approve it, but  
15 I don't specifically remember.

16 Q. And did you, in fact, authorize your  
17 attorneys to serve this particular document?

18 A. I -- I believe so.

19 MR. MORRIS: Can we just go to the  
20 very last request for admission, number 14?

21 (Scrolling.)

22 BY MR. MORRIS:

23 Q. You'll see that Request For  
24 Admission Number 14 asks you to admit that as  
25 of January 22nd, 2021, you hadn't paid the

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debtor the outstanding amount.

Do you see that?

A. Yes.

Q. And the definition of an "outstanding amount" is the number that's just above that.

And in response, you admitted only that you hadn't paid the debtor the amount the debtor asserts is due on the notes in the amount of approximately \$9 million. Do you see that?

A. Yes.

Q. Okay. I just want to ask a slightly different question: Have you paid any amounts to the debtor on account of the notes since December 1st, 2020?

A. I -- I don't -- I don't know for sure, but I don't believe so.

Q. Okay.

MR. MORRIS: Can we go to the next exhibit, please, Number 9?

(Exhibit 9 introduced.)

MR. MORRIS: Okay. And if we can scroll down just a little bit.

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2 BY MR. MORRIS:

3 Q. You'll see that these are the  
4 "Objections and Answers" that were tendered on  
5 your behalf in response to the debtor's first  
6 set of interrogatories.

7 Do you see that?

8 A. Yes.

9 MR. MORRIS: And if we can go to the  
10 last page.

11 MS. DEITSCH-PEREZ: Could you also  
12 scroll through it so he could --

13 MR. MORRIS: Well, I'm happy to do  
14 it. I'd like to do it my way, please.

15 Thank you.

16 Can we go to the last page, please?

17 (Scrolling.)

18 BY MR. MORRIS:

19 Q. Is that your signature there, sir?

20 A. Yes.

21 Q. And did you sign this document in  
22 front of a notary public?

23 A. Yes.

24 Q. And did you certify that you had  
25 read the document and the objections to the

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2 interrogatories?

3 A. Yes.

4 Q. And did you swear that the answers  
5 were true and correct?

6 A. Yes.

7 Q. Okay.

8 MR. MORRIS: Now let's go back to  
9 the top of the document.

10 BY MR. MORRIS:

11 Q. Did you, in fact, read this document  
12 before you signed the Verification in front of  
13 a notary?

14 A. Yes.

15 Q. Okay.

16 MR. MORRIS: Go to page 4 of 6,  
17 please.

18 BY MR. MORRIS:

19 Q. Just to help you out, do you see  
20 there's a reference to "Purported Agreement" in  
21 the first interrogatory, 1(a)?

22 A. Uh-huh.

23 Q. That's a "yes," sir; is that right?

24 A. Yes.

25 Q. Okay. The Purported Agreement

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2 refers back to the agreement that we were  
3 looking at in paragraph 40 of the answer -- and  
4 I can just read it again -- that says -- the  
5 agreement says, quote, "Plaintiff would not  
6 collect on the Notes."

7 And I asked you three questions in  
8 the interrogatory. Did this interrogatory  
9 accurately state, to the best of your  
10 knowledge, that you, personally, entered into  
11 the Purported Agreement on behalf of the  
12 debtor?

13 A. Which -- which one are you -- which  
14 agreement are you talking about?

15 Q. Just the one that we were talking  
16 about earlier -- and I'll just read it again  
17 for you. We can call it back on the screen, if  
18 it's helpful -- but the agreement that you  
19 referred to in your answer that, quote,  
20 "plaintiff would not collect on the notes."  
21 That's the Purported Agreement.

22 And so, I just want you to confirm  
23 that in your answer to Interrogatory No. 1, you  
24 stated that it was true and accurate that you  
25 entered into that agreement on behalf of the

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2     debtor.

3                   Do I have that right?

4           A.     I'm -- I'm going to say no because I  
5     think you're using the wrong description of the  
6     debtor versus Highland prebankruptcy.

7           Q.     I appreciate that. I apologize.  
8     Let me rephrase the question. That's a fair  
9     point.

10                  Did you enter into the agreement  
11     referred to in your answer on behalf of  
12     Highland?

13           A.     The -- the agreement on behalf of  
14     Highland prebankruptcy was agreed to by  
15     majority of the Class A members, which I  
16     believe at the time was Dugaboy.

17           Q.     All right. That doesn't say that in  
18     your answer here, does it?

19           A.     Again, there was an original, I  
20     think, answers; and then there were amended  
21     answers. I think the lawyers did the best they  
22     could to capture -- but, evidently, the parsing  
23     between pre-bankruptcy agreements and  
24     post-bankruptcy agreements was done the best it  
25     could be by the lawyers but I -- I -- I don't

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2 want to comment on the legal.

3 Q. I don't want to comment on legal  
4 stuff, either; but you signed this document,  
5 you verified this document, and you verified  
6 that it was true and accurate. Correct?

7 A. Yes.

8 Q. Okay. And in the first sentence to  
9 your answer in Interrogatory 1, you wrote, or  
10 somebody wrote on your behalf, quote: "The  
11 agreements were entered into on behalf of the  
12 debtor by James Dondero, subsequent to the time  
13 each note was executed."

14 Is that an accurate statement, or is  
15 it an inaccurate statement?

16 A. Again, it was between me and the  
17 Class A, the majority of the Class A members.  
18 It was a Class A -- the Class A members were  
19 representing Highland, never the debtor,  
20 because the debtor didn't exist yet.

21 But then, again, I don't know if  
22 this paragraph refers to, again, how we  
23 operated in bankruptcy, which was the  
24 assumption that the notes had -- were likely --  
25 were not likely to have any value for the



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2 estate. I don't -- I don't know which this is  
3 referring to.

4 Q. You understand that the definition  
5 of the "debtor" includes Highland Capital  
6 Management, L.P.?

7 A. I think we started off the depo by  
8 saying that there was a Highland prior to  
9 bankruptcy and then there was a Highland in  
10 bankruptcy and the debtor is Highland in  
11 bankruptcy.

12 Q. Let me just ask you this question,  
13 sir: Is that first sentence accurate, or is it  
14 wrong?

15 I didn't write it, so -- and you  
16 swore to it. You're the one who said it was  
17 true and accurate. So now I'm asking you: Is  
18 it actually true and accurate?

19 A. I'm going to stick with my testimony  
20 so far. I don't want to opine on that. I  
21 think it depends -- it's not -- maybe it's not  
22 perfectly written, but...

23 Q. Sir, with all due respect, please  
24 answer my question: Is the first sentence true  
25 and correct, as you verified?

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2 MS. DEITSCH-PEREZ: He already  
3 answered your question, John.

4 MR. MORRIS: That's fine. You can  
5 have the objection, asked and answered.

6 I'm asking him to answer again.

7 BY MR. MORRIS:

8 Q. Is that first sentence true and  
9 correct as you verified it?

10 A. "Behalf" probably isn't, like I  
11 said, the right word. It should be "between"  
12 the debtor and James Dondero. So that's how I  
13 would wordsmith that.

14 Q. Okay. So this -- this first  
15 sentence is not true and correct, to the best  
16 of your knowledge; is that fair?

17 A. I -- I don't want to say that other  
18 than I think it could be stated better.

19 Q. Okay. But as stated right now, it  
20 says that the agreement was entered into on  
21 behalf of the debtor by James Dondero. Have I  
22 read that correctly?

23 A. Yeah. I mean, that is what it says.  
24 Again, I feel like I'm interpreting legal  
25 phraseology here, like "on behalf of the

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2 debtor." If it was an agreement between the  
3 debtor and the Class A entered into --

4 MS. DEITSCH-PEREZ: Mr. Morris knows  
5 very well there's another -- that there's  
6 an amendment to this. I don't know why  
7 he's doing this.

8 Mr. Morris --

9 (Simultaneous conversation.)

10 MR. MORRIS: Please stop. Please  
11 stop.

12 I'm allowed to go through his sworn  
13 statements. Give me a break. Please stop.  
14 Don't coach --

15 MS. DEITSCH-PEREZ: You've been  
16 asking the same question over and over and  
17 over.

18 MR. MORRIS: You know, I'm going to  
19 shut this down if you do it one more time.  
20 I will, and I'm happy to make the motion to  
21 the Judge. I'm begging you, please stop  
22 interfering.

23 My apologies, Mr. Dondero. Never  
24 directed at you personally.

25 BY MR. MORRIS:

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Q. The second sentence of the answer, have you been able to identify any documents that reflect or memorialize the agreements?

A. I mean, I -- I -- I don't -- I don't know, but I don't think so.

Q. Thank you very much.

MR. MORRIS: Go to the next document, please.

(Exhibit 10 introduced.)

BY MR. MORRIS:

Q. Do you see that this is the "Amended Answer" that was filed on your behalf?

MS. DEITSCH-PEREZ: Let's please --

THE WITNESS: Yes.

MS. DEITSCH-PEREZ: -- scroll through.

THE WITNESS: Yeah, please scroll through.

(Scrolling.)

BY MR. MORRIS:

Q. All right. Have you seen this document before, sir?

A. Yes, generally.

Q. Did you -- do you recall if you saw

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it prior to the time it was served and filed on  
your behalf?

A. Probably.

Q. Did you authorize it to be filed on  
your behalf?

A. Yes.

MR. MORRIS: Can we please go to  
page 6 of 8?

(Scrolling.)

MR. MORRIS: And if we can scroll  
just down to the "Affirmative Defenses."

BY MR. MORRIS:

Q. All right. Do you see  
paragraph 40 --

A. Yeah.

Q. -- as compared to the prior version  
of your answer, has added the words, quote,  
"upon fulfillment of conditions subsequent."  
Do you see that?

A. Yes.

Q. Why were those words added?

MS. DEITSCH-PEREZ: Object to the  
form.

A. I think to make this document more

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complete and more clarified as things were  
learned and investigated.

BY MR. MORRIS:

Q. And were things "learned and  
investigated" after the time that you submitted  
the -- withdrawn.

Were things "learned and  
investigated" after the time the original  
answer was served and filed on your behalf?

MS. DEITSCH-PEREZ: Object to the  
form.

And I would also just caution the  
witness before he speaks to think -- to  
make sure he doesn't disclose  
attorney-client communications.

A. I'm sorry, could you please repeat  
the question?

BY MR. MORRIS:

Q. Sure. Did you, personally, learn or  
discover anything related to this amended  
paragraph 40 after the time that the original  
answer was filed on your behalf?

MS. DEITSCH-PEREZ: Same objection.

A. We went through the -- the --

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MS. DEITSCH-PEREZ: When you say  
"we," are you talking about you and  
lawyers?

THE WITNESS: Yes.

MS. DEITSCH-PEREZ: Don't disclose  
your communications with lawyers.

BY MR. MORRIS:

Q. All right. I don't want to know  
anything about your communications with  
lawyers, but I'm going to ask you for facts.

What facts, if any, did you learn  
after the original answer was filed that relate  
to the words, quote, "upon fulfillment of  
conditions subsequent."

A. The "conditions subsequent" involved  
in the first quarter of 2019 were always an  
event, but it wasn't captured properly or  
needed to be clarified in the amendment.

Q. Well, you mentioned that "things  
were learned and investigated" after the answer  
was filed, and I'm just trying to pin down what  
that was?

A. I -- I took it more seriously with  
the lawyers as it -- as the notes became more

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2 of an issue, and it's -- I'm very busy over  
3 here and then spent more time going through the  
4 details, and this needed to be clarified or  
5 stated differently.

6 Q. Okay. With respect to the agreement  
7 referred to in paragraph 40, whose idea was it  
8 to enter into that agreement?

9 A. It was -- it was mine.

10 Q. Okay. And who were -- who were the  
11 majority of Class A holders that you referred  
12 to earlier?

13 A. That was the counterparty  
14 decision-maker for Highland prior to  
15 bankruptcy, and like I said, I believe it was  
16 Dugaboy.

17 Q. Can you think of any other member of  
18 Class A who entered into this agreement on  
19 behalf of the debtor in the early part of 2019  
20 other than Dugaboy?

21 MS. DEITSCH-PEREZ: Object to the  
22 form.

23 A. I do believe it was necessary.  
24 Dugaboy alone was the requisite majority. I  
25 didn't -- I don't remember or remember even



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thinking about including anybody else.

BY MR. MORRIS:

Q. Okay. And to be clear, Mr. Dondero, I'm not -- I don't have a view one way or the other as to whether you should or shouldn't -- who you should have contacted.

I just want to know who -- if you can identify for me the Class A members who acted to approve the agreement that's referred to in paragraph 40.

Is there anybody other than Dugaboy?

A. Not -- not -- not -- not specifically regarding that comp cycle.

Q. Okay. And who acted on behalf of Dugaboy to enter into the agreement that's referred to in paragraph 40?

A. The trustee.

Q. The trustee of Dugaboy?

A. Yes.

Q. And who was the trustee of Dugaboy in the January/February 2019 time period that entered into this agreement on behalf of the debtor?

A. My sister Nancy.

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2 Q. Did you and Nancy discuss this  
3 agreement at all?

4 A. This agreement? No.

5 Q. Can you describe --

6 MS. DEITSCH-PEREZ: What do you mean  
7 by "this agreement"?

8 (Simultaneous conversation.)

9 A. Not the one that's on the screen.

10 BY MR. MORRIS:

11 Q. Yes. That's the only one that I'm  
12 talking about, so --

13 MS. DEITSCH-PEREZ: So you mean --

14 MR. MORRIS: Please, please, Deb --

15 MS. DEITSCH-PEREZ: John, can you  
16 please clarify: Are you asking if he  
17 discussed the answer with Nancy or the --

18 MR. MORRIS: I didn't use the word  
19 "answer." I used the word "agreement," so  
20 let me --

21 MS. DEITSCH-PEREZ: I know, but he  
22 pointed to the screen.

23 (Simultaneous conversation.)

24 MR. MORRIS: Are you done?

25 MS. DEITSCH-PEREZ: Yes.

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2 BY MR. MORRIS:

3 Q. Mr. Dondero, can you describe for  
4 me -- withdrawn.

5 Did you discuss with your sister  
6 Nancy, the agreement that's referred to in  
7 paragraph 40?

8 A. The agreement to subsequent  
9 conditions, yes, absolutely. But this  
10 agreement that's on the screen, I've never --  
11 I've never -- I've never shown her this  
12 document or talked to her about it.

13 Q. I'm not asking about the document.  
14 I'm not asking about the document. I'm asking  
15 about the agreement that's referred to in  
16 paragraph 40.

17 Do you understand that?

18 A. Yes. And, yes, we had several  
19 conversations about it.

20 Q. Okay. Can you describe for me  
21 everything you remember about your discussions  
22 with Nancy concerning the agreement that's  
23 referred to in paragraph 40?

24 A. That the loans that were in place  
25 would be forgiven upon a monetization -- the

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favorable monetization of certain large or liquid assets on the Highland balance sheet; and the three that were focused on was MGM, Trussway, and Cornerstone.

Q. Did she say anything in response?

A. Just, "How much are we talking about?" And I told her it was about 9 million in aggregate, and -- and I told her that it was -- that the forgiveness or the compensation was compliant regarding any credit covenants or Hunter Mountain covenants --

Q. Do you recall any --

A. -- that -- that if it were to be forgiven, that additional compensation would be compliant or permitted and really not material relative to any outstanding credit agreements that Highland had or agreements with Hunter Mountain.

Q. Is this something that you discussed with her, or is this just information that you're giving me?

A. This is what I discussed -- that's almost the entirety of the conversation. It happened over a couple different conversations,

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2 but...

3 Q. Did anybody participate in any of  
4 the conversations you're describing other than  
5 you and your sister?

6 A. I don't believe it was necessary, it  
7 didn't include anybody else.

8 Q. Okay. Again, I'm not here to  
9 question. I'm just looking for facts,  
10 Mr. Dondero.

11 So nobody participated in any of  
12 these conversations that you can recall other  
13 than you and Nancy; is that correct?

14 A. Correct, that I -- yes, there was  
15 never a third party involved in our  
16 conversations. I don't know -- I don't think  
17 she discussed it with anybody else, but I don't  
18 know.

19 Q. Did -- was the agreement subject to  
20 any negotiation? Did she make any  
21 counterproposal of any kind?

22 A. No. No, I -- again, I believe both  
23 of our views at the time was that it was  
24 immaterial to Highland overall or any other  
25 agreements.

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2 Q. Do you know if she sought any  
3 independent advice before entering into the  
4 agreement that you've described?

5 A. I don't know.

6 Q. Do you recall whether you provided  
7 her with any documents of any kind in  
8 connection with the discussions that led to the  
9 agreement that's referred to in paragraph 40?

10 A. I -- I have no -- I don't -- I don't  
11 believe -- no, I don't believe I gave her  
12 copies of the relevant Hunter Mountain  
13 limitations, or whatever. I just spoke to her  
14 about it.

15 Q. Okay. I'm just asking -- I'm asking  
16 a broader question: Do you recall giving her  
17 any documents of any kind in connection with  
18 the discussions that led to the agreement in  
19 paragraph 40?

20 A. Not -- not that I recall. She --  
21 she may -- she may have some, but I don't  
22 remember.

23 Q. Do you know if there were any  
24 resolutions that were adopted by Highland to  
25 reflect the agreement that's referred to in

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paragraph 40?

A. Resolutions that -- no, not that I'm aware of.

Q. Did you give -- did you give Nancy a copy of the three promissory notes that were the subject of the agreement referred to in paragraph 40?

A. No.

Q. Did she ask to see any documents before entering into the agreement that's referred to in paragraph 40?

A. I -- I don't remember.

Q. Did you suggest that she speak with anybody prior to the time that she entered into the agreement that's referred to in paragraph 40?

MS. DEITSCH-PEREZ: Asked and answered.

A. Yeah. No.

BY MR. MORRIS:

Q. Do you know whether she actually spoke with anybody concerning the subject matter of the agreement that's referred to in paragraph 40 prior to the time it was entered

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into?

A. I don't know.

Q. Is there any time period by which the subsequent -- the conditions subsequent have to be fulfilled, or are they open-ended?

A. I believe it was open-ended.

Q. Under the agreement that's referred to in paragraph 40, did the debtor surrender its right to make a demand under the promissory notes?

MS. DEITSCH-PEREZ: And, again, are you talking about the debtor as in post-bankruptcy or --

MR. MORRIS: I apologize. Thank you. Thank you. Thank you. Thank you.

Withdrawn.

BY MR. MORRIS:

Q. Under the agreement that you reached with Nancy that's referred to in paragraph 40, was it your understanding that Highland surrendered its right to make a demand for payment of unpaid principal and interest under the notes?

A. I think essentially, yes.



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Q. Okay. What did Highland receive in return for its agreement to surrender its right to make a demand for unpaid principal and interest, if anything?

A. I think with all forgiveness of notes, what it gets is it gets focus in terms of the monetization and it reduces additional compensation that I could have/would have taken otherwise, or could have/would have been entitled to otherwise.

So, it's -- yeah, I mean, I think it's, again, heightened focused for something that would be great for the debtor or great for Highland at the time and reduces -- that form of forgiveness becomes compensation when and if it occurs, and then it -- it theoretically reduces other compensation.

Q. So why not just forgive it at that moment?

Why tie it to "conditions subsequent"?

A. I thought it was more appropriate.

Q. Did you and Nancy discuss at all what the benefit would be to Highland from this

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arrangement?

A. The focus -- the focus parts for sure.

Q. And without -- without the agreement that's referred to in paragraph 40, you wouldn't have been focused on maximizing the enterprises; is that right?

A. No.

Q. So -- I'm sorry, maybe I missed it. When you used the word "focus" -- let me -- when you use the word "focus," what do you mean?

What is the benefit to the debtor?

MS. DEITSCH-PEREZ: Object to the form.

He said "heightened focus."

A. Yeah, heightened focused was my words, which --

BY MR. MORRIS:

Q. Okay.

A. -- you know, means beyond normal focus. It means additional effort just like in any company or what we do here with other employees, for things you really want to get

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2 done or focus on, you provide that extra  
3 incentive.

4 Q. Okay. So -- so that's the benefit  
5 to Highland, was that you were going to have a  
6 heightened focus on maximizing value; is that  
7 fair?

8 MS. DEITSCH-PEREZ: Object to the  
9 form.

10 A. And then also the part 2 of my  
11 answer, right, which, you know, that  
12 forgiveness would be compensation which  
13 would -- in any given year, additional  
14 compensation coming from forgiveness reduces  
15 other compensation.

16 BY MR. MORRIS:

17 Q. Was that part of the agreement that  
18 you reached with Nancy? Was that -- was that  
19 when these notes were forgiven, you would forgo  
20 an amount equivalent to the outstanding  
21 principal and unpaid interest?

22 MS. DEITSCH-PEREZ: Object to the  
23 form, misstates his prior testimony.

24 A. Yeah. I remember discussing the  
25 focus part with her. The -- I was giving that

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2 answer when you were asking me what would be  
3 the benefit or consideration to Highland and  
4 then ultimately to debtor. I was giving you  
5 compensation answer.

6 BY MR. MORRIS:

7 Q. Okay. So I just -- but I do want to  
8 try to understand from your perspective the  
9 benefit to the debtor.

10 And, one, you told me about the  
11 heightened focus, and the second --

12 A. Right.

13 Q. -- I think you said, and correct me  
14 if I'm wrong, that it would relieve the debtor  
15 of paying some compensation in the future.

16 Am I mistaken about that?

17 A. Yeah, I mean -- I'm sorry. Repeat  
18 that one more time, please.

19 Q. I believe you said that the second  
20 benefit to Highland from entering into the  
21 agreement referred to in paragraph 40 is that  
22 it would relieve them of a future obligation to  
23 pay compensation in the same amount.

24 Do I have that right?

25 MS. DEITSCH-PEREZ: Object to the

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2 form.

3 A. Maybe not exactly "the same amount,"  
4 but it would -- it would -- it would reduce  
5 comp -- yes, it would -- it would, like, in the  
6 next cycle, reduce -- or when it was realized,  
7 would likely reduce comp then.

8 BY MR. MORRIS:

9 Q. Okay. And by what amount would it  
10 likely reduce comp, then?

11 A. I don't know. By significant --  
12 by -- by a significant amount, by something  
13 similar to the 9 million bucks.

14 Q. Okay. So, is there any -- I'm just  
15 trying to understand your perspective.

16 One of the benefits from entering  
17 into the agreement referred to in paragraph 40  
18 is that upon the realization of the forgiveness  
19 of the debt, Highland or the debtor, whatever  
20 the case may be, in the future would be  
21 relieved from paying you an amount similar to  
22 the principal amount of the notes?

23 Do I have that right?

24 A. Yeah, or -- or -- yeah. I guess the  
25 reason why I keep going back and forth on the

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exactness of the answer is that if -- there's -- depending on what the compensation target is and whether or not you wanted to grow something up or you're looking for a net amount, but forgiveness of debt becomes a taxable event with no -- no additional ability to pay taxes. So it's usually not an exact offset to future compensation, the way we've done it here historically.

Q. In the agreement that you reached with Nancy that's referred to in paragraph 40, were there any other -- withdrawn.

In the agreement that you reached with Nancy that's referred to in paragraph 40, were there any circumstances under which you would have been obligated to pay all unpaid principal and interest under the notes?

A. If the illiquid assets weren't -- or if -- if none of the illiquid assets were monetized.

Q. But you were -- you were, at the time you entered into this oral agreement, in control of whether or not to monetize those illiquid assets, right?

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2 A. And I expected they would be over  
3 time, yes.

4 Q. Okay. So, based on your control of  
5 the enterprise at the time that you entered  
6 into the agreement, is there any -- did you  
7 have any -- any scenario under which you  
8 believed you might actually have to pay back  
9 the unpaid principal and interest due under the  
10 notes?

11 A. If they weren't monetized.

12 Q. Okay. Anything else?

13 A. Assets weren't monetized, yeah.

14 Q. Anything else?

15 A. That's -- that's my recollection.

16 Q. If -- if you -- have the "conditions  
17 subsequent" been met yet?

18 A. I believe the announcement of the  
19 MGM sale will meet the conditions precedent  
20 when it closes four or five months from now.

21 Q. Okay. But none of them have been  
22 met -- have the conditions subsequent been met  
23 as of today?

24 A. Have the conditions subsequent been  
25 met today. I don't have awareness of --

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despite objecting vehemently, we don't have awareness of what the debtor is doing with Trussway or Cornerstone. So there's a potential that those could have triggered, but I don't -- I don't have -- I don't have awareness.

Q. Okay. Do you know -- and forgive the question, sir, honestly. But do you know --

A. Sure.

Q. -- whether your estate would be liable to pay all of the undue principal -- unpaid principal and interest if you passed before the conditions subsequent were satisfied?

MS. DEITSCH-PEREZ: Object to the form.

A. I -- I don't know that answer.

BY MR. MORRIS:

Q. That wasn't something that you and your sister discussed in January or February of 2019; is that fair?

A. I wasn't contemplating that event at that point in time.



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2 Q. That's why I say "forgive the  
3 question," sir.

4 Did you ever ask anybody to write  
5 the agreement in paragraph 40 down on paper so  
6 that it was memorialized somewhere?

7 A. No.

8 Q. Did you and Nancy --  
9 (Simultaneous conversation.)

10 A. I'm sorry, go ahead.

11 BY MR. MORRIS:

12 Q. Do you and Nancy communicate by  
13 email from time to time?

14 A. Almost entirely phone. I -- from  
15 time to time, but it's almost entirely phone.

16 Q. All right. Let's -- let's move on.

17 A. Can I clarify something from before?

18 Q. Of course.

19 A. If the assets were never monetized  
20 or the -- the notes would stay in place and not  
21 be forgiven.

22 If the assets were all monetized  
23 below cost or what was considered a less  
24 favorable scenario, then it would be -- to  
25 forgive it, something would have to be

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monetized above cost, you know; but if they were all monetized below cost, that would make the note payable.

Q. I appreciate that.

MR. MORRIS: Let's go to the next document, document Number 11.

(Exhibit 11 introduced.)

MR. MORRIS: If we could just scroll down, please.

(Scrolling.)

BY MR. MORRIS:

Q. All right. Now, these are your objections and responses to the debtor's second request for admissions. Do you see that?

A. Yes.

MR. MORRIS: And let's scroll down to page 4, please.

(Scrolling.)

BY MR. MORRIS:

Q. Okay. Do you recall whether you saw this document before it was served and filed on your behalf?

A. Yes. Can we go all the way through, just go all the way down?

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2 Was this notarized, also?

3 Q. No, because these are responses to  
4 requests to admit. You only --

5 A. Okay.

6 Q. You only notarize responses to  
7 interrogatories, for whatever reason. So these  
8 were not. Yeah.

9 But I'm just asking you if you have  
10 a memory of reviewing the requests for  
11 admission before they were served and filed on  
12 your behalf?

13 A. Yes.

14 Q. Okay. And did you authorize your  
15 lawyers to serve and file this document on your  
16 behalf?

17 A. Yes.

18 Q. Okay. Looking at Request For  
19 Admission Number 1, it asks you to admit that  
20 in December 2019, you made a payment to the  
21 debtor, a portion of which was applied to  
22 reduce principal and/or interest due under one  
23 or more of the notes.

24 Have I read that correctly?

25 A. Yes.

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Q. And you've admitted that that statement is true and accurate as written, right?

A. Yeah, I believe so. The -- yeah, I believe so. Let me let you ask the questions.

Q. Okay. Do you have any reason to believe, as you sit here right now -- let me ask you a different question.

Do you want to amend your response in any way right now?

A. I -- I'm not aware of small amounts in terms of, like, interest or principal; and then sometimes the tax guys will say periodic interest payments are important to -- for the character of the notes, so sometimes periodic interest payments are made. Sometimes I think they peck on some of the notes.

I don't -- I don't know or remember, but I hope that something like this is correct. Sometimes, if there was a need for cash into Highland, the easiest way to -- for me or a different entity to put cash into Highland was to reduce a principal amount of a note with the thought that we could create new notes or

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increase another note later.

So how many times or how often interest payments were made or if there was some small principal payment made at some point, I don't know the details; but I'm hoping that's accurate.

Q. Okay. We looked at three notes that were signed by you in 2018, correct?

A. Yes.

Q. You signed other notes in favor of Highland prior to that time, correct?

A. I believe -- yeah. I mean, I believe there were numerous notes beyond these.

Q. Were -- were -- did you ever sign a note in favor of Highland that was forgiven?

A. I don't -- I don't know.

Q. Do you have any recollection of ever paying taxes in connection with a note that was subsequently forgiven by Highland?

A. If there was -- if there was a forgiveness and it was taxable, I would have paid the taxes. We were compliant in that regard. I'm a hundred percent comfortable we're compliant, but I don't know.

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2 Q. Okay. And I appreciate -- I didn't  
3 mean to suggest that you weren't compliant,  
4 sir. I'm just asking you if you can identify  
5 any note that you made in favor of Highland  
6 that was ever forgiven.

7 MS. DEITSCH-PEREZ: And I'm just  
8 going to object because, while he's not  
9 30(b)(6) witness, this is a deposition  
10 taken in a particular case and he may have  
11 not looked at the records going back to  
12 2000, or whatever, that's -- since when  
13 Highland was started.

14 MR. MORRIS: I just can't tell you  
15 how inappropriate that is.

16 BY MR. MORRIS:

17 Q. Go ahead, Mr. Dondero.

18 A. The same answer, I don't know.

19 Q. Okay. You did, in fact, pay in full  
20 all principal and interest due on notes that  
21 you made in favor of Highland other than the  
22 three notes at issue in this case, correct?

23 MS. DEITSCH-PEREZ: Object to the  
24 form.

25 A. I -- I don't know. I would repeat

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the answer I gave a few minutes ago when I kind of rambled about cash management.

BY MR. MORRIS:

Q. Do you know how many notes you made in favor of Highland beyond the three that are the subject of this litigation?

MS. DEITSCH-PEREZ: Object to the form.

A. I -- I do not, regarding myself personally.

I am aware that the aggregate amount of affiliated notes is approximately 70 or \$80 million, including my notes; but that's it. I mean, that's all I know.

BY MR. MORRIS:

Q. All right. I'm just asking you about you, in your individual capacity.

A. I don't know.

Q. You don't know --

(Audio distortion.)

THE REPORTER: You broke up, sir.

BY MR. MORRIS:

Q. You don't know the number of notes -- (audio distortion) -- Highland beyond

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2 these three, correct?

3 A. Correct.

4 Q. And you can't recall whether any --  
5 any notes that you made in favor of Highland  
6 were ever forgiven, correct?

7 A. I -- I don't know.

8 Q. Okay. So, did you ever object to  
9 the application of the payment referred to in  
10 Request For Admission Number 1 to principal  
11 and/or interest due under one or more of the  
12 notes?

13 Did you ever object to the  
14 application of the payment in that way?

15 MS. DEITSCH-PEREZ: Object to the  
16 form.

17 A. I think the decision on how to  
18 handle cash needed at Highland was entirely  
19 made and the application to note principal or  
20 interest was -- was entirely decided by the  
21 accounting group.

22 BY MR. MORRIS:

23 Q. But did you know that decision was  
24 made in or around December 2019?

25 A. Not really, no. Not specifically.



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Q. Well, you've admitted to the fact.

So, when did you learn that in December 2019 a payment made on your behalf, at least a portion of which was applied to reduce principal and/or interest due under one or more of the notes? When did you learn that?

A. I don't know. It would have been as part of the process in preparing this document.

Q. So it's your testimony that somebody used your money in December 2019 to reduce principal and/or interest due under one or more of the notes without your knowledge?

A. Yeah, without my specific knowledge. There was a reason to put money in at that point in time, and then how they applied it was not my decision --

Q. Making --

A. -- not --

Q. Making a payment -- you would agree that making a payment of principle or interest under one or more of the notes conflicts with the agreement that you reached with Nancy, right?

MS. DEITSCH-PEREZ: Object to the

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form.

A. No, that's not true.

BY MR. MORRIS:

Q. Well, the conditions subsequent hadn't arisen yet; is that fair?

A. The notes were in '18, correct?

Q. Yes, sir.

A. And then, yeah, the subsequent condition was in the first quarter of '19.

Q. Right. And then, in December of '19, a payment of principal and/or interest was made against one or more of the notes, right?

A. Yes.

Q. And I'm just asking you, sir, if that's inconsistent with the agreement that you reached with Nancy.

MS. DEITSCH-PEREZ: Object to the form.

A. And I'm saying -- I'm saying no. I mean, it's --

BY MR. MORRIS:

Q. Okay. Since learning of the payment, have you tried to identify the person who was responsible for applying your money in

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the way that's described in Request For  
Admission Number 1?

A. No.

MR. MORRIS: Can we go down to  
number 4, please?

BY MR. MORRIS:

Q. In your amended answer, I think you  
asserted that the -- "each note is ambiguous."  
Do I have that right?

We can go back, if you would like to  
look?

A. Is this admission number 4? Is that  
where you're pointing to?

Q. It is, and I'll just read it. It  
refers to paragraph 45 of the amended answer,  
and I'll read it. But I'm happy to go back and  
put it on the screen, if you'd would like.

But it says simply: "Defendant  
further asserts that each note is ambiguous."

So request for number 4 asks you to  
admit that before you served that amended  
answer, you had never informed the debtor of  
your belief that any provision of the notes was  
ambiguous.

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2 Do you see that?

3 A. Yes.

4 Q. And you've denied that request for  
5 admission.

6 Do you see that?

7 A. Yes.

8 Q. So, who did you inform at the debtor  
9 of your belief that a provision of the notes  
10 was ambiguous?

11 Who did you --

12 MS. DEITSCH-PEREZ: Object.

13 BY MR. MORRIS:

14 Q. Who did you communicate that to?

15 MS. DEITSCH-PEREZ: Object to the  
16 form, no foundation.

17 A. I -- I -- I don't -- "I don't know"  
18 is my answer to pretty much any question you  
19 could ask there.

20 BY MR. MORRIS:

21 Q. This is -- you're denying the  
22 request for admission, and that's your right.

23 Did you ever inform the debtor of  
24 your belief that a provision of the notes was  
25 ambiguous?

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2 MS. DEITSCH-PEREZ: Object, no  
3 foundation.

4 A. As -- ask the question again,  
5 please.

6 BY MR. MORRIS:

7 Q. Did you ever inform the debtor of  
8 your belief that any provision of the notes was  
9 ambiguous?

10 MS. DEITSCH-PEREZ: Object, no  
11 foundation.

12 A. You know, I don't know what  
13 conversations were had between lawyers. I -- I  
14 don't know.

15 BY MR. MORRIS:

16 Q. Okay. So I'm going to ask a  
17 slightly different question because of your  
18 answer: Can you tell me whether you or anybody  
19 acting on your behalf ever informed the debtor  
20 of your belief that any provision of any of the  
21 notes was ambiguous?

22 MS. DEITSCH-PEREZ: Object, no  
23 foundation.

24 A. I'm going to have to say, yes, I  
25 believe that statement is true; but I don't

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2 have specific knowledge.

3 BY MR. MORRIS:

4 Q. Do you have any knowledge, can you  
5 identify any person who informed the debtor of  
6 your belief?

7 A. I don't have specific knowledge. I  
8 don't -- I don't -- I don't know.

9 Q. Can you tell me when the debtor was  
10 informed of your belief that any provision of  
11 the notes was ambiguous?

12 MS. DEITSCH-PEREZ: Object, no  
13 foundation.

14 A. I don't know.

15 BY MR. MORRIS:

16 Q. Can you identify the person who was  
17 acting on behalf of the debtor who was informed  
18 by you or anyone acting on your behalf of your  
19 belief that any provision of the notes was  
20 ambiguous?

21 MS. DEITSCH-PEREZ: Object, no  
22 foundation.

23 A. I don't know.

24 BY MR. MORRIS:

25 Q. Okay.

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2                   MR. MORRIS: Let's go to the next  
3 exhibit, please.

4                   THE WITNESS: Is this a good time  
5 for a lunch break?

6                   MR. MORRIS: Yeah. I'm happy to do  
7 it. I'm trying to move as quickly as I  
8 can, Mr. Dondero. This is a little bit  
9 longer than you and I usually sit for, and  
10 I apologize for that, but I'm happy to take  
11 as long a break as you -- as you need.

12                  MS. DEITSCH-PEREZ: How long do you  
13 think you have for the rest of the  
14 deposition? What's your guess?

15                  MR. MORRIS: I would say more than  
16 an hour, less than two.

17                  MS. DEITSCH-PEREZ: Do you want to  
18 take a really short --

19                  THE WITNESS: Can we take a half  
20 hour, like 12:30 our time, 1:30 East Coast  
21 time?

22                  MR. MORRIS: Of course.

23                  THE WITNESS: Yeah. So, we'll take  
24 35 minutes, and then we'll get back to it.  
25 You know --

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2                   THE REPORTER: Are we still on the  
3 record, please?

4                   MR. MORRIS: Yes.

5                   COURT REPORTER: Okay.

6                   MS. DEITSCH-PEREZ: We'll --

7                   MR. MORRIS: If you have time  
8 constraints -- if you have time  
9 constraints, Mr. Dondero, I'm prepared to  
10 keep going. I'll take a shorter break. I  
11 don't want -- you know, I apologize for the  
12 burden, but these are relevant questions.

13                  THE WITNESS: Yeah, let's -- let's  
14 do 35 minutes, and we will try and wrap it  
15 up in -- like you're saying, like an hour  
16 or less than two.

17                  MR. MORRIS: Yeah.

18                  THE WITNESS: Yeah. I do need to be  
19 someplace in the early afternoon.

20                  MR. MORRIS: I assure you, I'll do  
21 my best to keep to that time frame.

22                  THE WITNESS: Okay. Thank you.

23                  THE REPORTER: And we're off the  
24 record.

25                  (Lunch recess held.)



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2 MR. MORRIS: Can we put up the next  
3 exhibit, which I believe is Number 12?

4 (Exhibit 12 introduced.)

5 BY MR. MORRIS:

6 Q. Okay. So, Mr. Dondero, these are  
7 interrogatories, and so I direct you first to  
8 the last page of the document, the Verification  
9 page.

10 And is that your signature, sir?

11 A. Yes.

12 Q. Now, this wasn't notarized. Is  
13 there a reason why you didn't get this  
14 notarized?

15 A. No.

16 Q. Okay.

17 MR. MORRIS: If we could just scroll  
18 back up.

19 BY MR. MORRIS:

20 Q. But is the Verification true --

21 MR. MORRIS: If we just go back to  
22 it.

23 BY MR. MORRIS:

24 Q. At the time you signed this  
25 document, had you read the Defendant's

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Management, L.P.'s Second Set of  
Interrogatories?

A. Yes.

Q. And did you believe that the facts  
stated therein were both within your personal  
knowledge and were true and correct?

A. Yes.

Q. Okay.

MR. MORRIS: Can we go to the  
substance of the document on page 4 of 6?

BY MR. MORRIS:

Q. Okay. So, in the answer to  
Interrogatory No. 1, you identify the  
conditions subsequent that were the subject of  
the agreement that we've been talking about  
that you and Nancy entered into.

Do I have that right?

A. Yes.

Q. And to the best of your knowledge,  
does the answer that's set forth in response to  
Interrogatory No. 1 fully and accurately set  
forth the conditions subsequent that were the  
subject of the agreement?

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2 MS. DEITSCH-PEREZ: Object to the  
3 form.

4 A. Repeat the question, please.

5 BY MR. MORRIS:

6 Q. Does this answer to Interrogatory  
7 No. 1 set forth, to the best of your knowledge  
8 and understanding, the conditions subsequent  
9 that were part of the agreement that you and  
10 Nancy entered into in January or February 2019?

11 MS. DEITSCH-PEREZ: Object to the  
12 form.

13 A. Yes, large -- yes, largely --

14 BY MR. MORRIS:

15 Q. Okay.

16 A. -- or yes.

17 Q. Is there any aspect of this that you  
18 believe right now is incorrect?

19 A. No.

20 Q. Is there any aspect of your  
21 agreement with Nancy on the conditions  
22 subsequent that's not described in this answer?

23 MS. DEITSCH-PEREZ: Object to the  
24 form.

25 A. My recollection is that that largely

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captures it.

BY MR. MORRIS:

Q. Okay. There's a reference there to, quote, "the disposition of the portfolio company interests managed and/or owned directly or indirectly by Highland and/or its affiliates or managed funds."

Do you see that?

A. Yes.

Q. What does that refer to?

A. Just, you know, MGM is owned in a variety of places, Cornerstone is owned in a variety of places, and then Trussway is owned in a subsidiary of Highland.

So there -- I believe it's to capture the fact of the different ownerships or controls of those three different investments.

Q. Are those the only portfolio company interests managed and/or directly or indirectly by Highland or its affiliates -- withdrawn.

That was bad.

This answer doesn't refer specifically to any particular assets, correct?

A. It does not.

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2 Q. Okay.

3 A. Well, yeah. I think what the intent  
4 was -- those three companies I just mentioned  
5 were always considered portfolio companies.  
6 There have been a few others over the years,  
7 but those are -- those -- I think they're  
8 trying to capture them that way, but I only  
9 remember talking to her about those three.

10 Q. Are there any other portfolio  
11 company interests that are managed and/or owned  
12 directly or indirectly by Highland and/or its  
13 affiliates or managed funds? Are there any  
14 other assets?

15 MS. DEITSCH-PEREZ: Object to the  
16 form.

17 A. There were some lesser private  
18 equity investments or companies, yes.

19 BY MR. MORRIS:

20 Q. Can you identify them?

21 A. CCS Medical. I think OmniMax was  
22 one. Kerri International. Yeah, those --  
23 those are ones that come to mind.

24 Q. Okay. But notwithstanding the  
25 answer here, to the best of your recollection,

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the agreement that you had with Nancy pertained only to MGM, Cornerstone, and Trussway. Do I have that right?

MS. DEITSCH-PEREZ: Object to the form.

A. The monetization of those three were the -- were the conditions subsequent, yes.

BY MR. MORRIS:

Q. Okay. And there's a reference there to being disposed of, quote, on a favorable basis.

Do you see that?

A. Yes.

Q. What does that mean?

A. Above cost or book value.

Q. How much above cost or book value would you have to dispose of MGM, Cornerstone, and Trussway in order to trigger the conditions subsequent?

A. There wasn't -- there was just monetization on a favorable basis. There wasn't a specific amount on each individual one. It only took one to trigger it.

Q. Oh. So the sale of any of those

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three assets would trigger the conditions subsequent?

A. Correct.

Q. Okay. And who decided whether the asset was sold on a favorable basis?

Who made that decision, under your agreement with Nancy?

A. It was just defined relative to cost, so it was just -- it was just a factual -- there's nothing to decide. It would just be a factual answer.

Q. So, I just want to make sure I understand.

Your agreement with Nancy was that --

A. Yes.

Q. -- that -- all right. Withdrawn.

Your agreement with Nancy in January or February 2019, was that if any of MGM, Cornerstone, or Trussway was sold at cost, the debtor would forgive your obligations under the three notes.

Do I have that right?

MS. DEITSCH-PEREZ: Object to the

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form.

A. If any of them were sold above cost, it would -- monetization would trigger the -- the three notes -- forgiveness of the three notes, yes.

BY MR. MORRIS:

Q. Okay. And I just want to see if I can understand: Did you and Nancy discuss in January or February 2019 how much above cost the sale would have to be in order for the debtor to forgive your obligations under the three notes?

MS. DEITSCH-PEREZ: Object to the form.

A. No. It just had to be above cost, not a amount above cost.

BY MR. MORRIS:

Q. Okay.

A. Because just monetizing it -- just monetizing it and getting liquidity for an illiquid investment, even if it was at cost, is good. So something above cost is great. And those are all big assets, and the notes were small.



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Q. Okay. So, again, I just want to really understand your agreement with Nancy.

Did you and her specifically agree in January or February 2019 that if you sold either MGM or Cornerstone or Trussway for at least \$1 more than cost, then your obligations under the three notes would be forgiven?

MS. DEITSCH-PEREZ: Object to the form.

A. Before I answer that, I just -- can you repeat so I can get all the subjects and participants straight in my head from the beginning of that question?

BY MR. MORRIS:

Q. Sure. Did you and Nancy agree in January or February 2019 that if Highland sold either MGM or Cornerstone or Trussway for an amount that was equal to at least \$1 more than cost, that -- that Highland would forgive your obligations under the three notes?

MS. DEITSCH-PEREZ: Object to the form.

A. I believe that is correct.

BY MR. MORRIS:

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Q. Thank you very much.

Was Grant Scott the trustee of the Dugaboy trust in January or February 2019?

A. He was at one point. I don't know if he was -- I don't know when he was the trustee, but he got replaced at a -- some point in time.

Q. Do you know if it was before or after the petition date?

A. Before or after the petition date.

It was before the petition date.

MR. MORRIS: Okay. I'd ask for the production of any documents that show that Nancy Dondero was the trustee of the Dugaboy trust in January or February 2019.

MS. DEITSCH-PEREZ: I'll take your request under advisement.

BY MR. MORRIS:

Q. Now, the last portion of Interrogatory No. 1, the answer to it, refers to a, quote, "basis wholly outside Dondero's control."

Do you see that?

A. Uh-huh.

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Q. Was that part of the agreement that you entered into with Nancy in January or February 2019?

A. Yeah. It was probably unnecessary complexity, but yes.

Q. Was there anything that you envisioned in January or February 2019 that would have caused you to lose control of Highland?

MS. DEITSCH-PEREZ: Object to the form.

A. No, and I wasn't -- that wasn't the thought process.

BY MR. MORRIS:

Q. So what was the thought process? Why was that phrase part of -- why -- withdrawn.

Did you include that -- that aspect of the conditions subsequent -- withdrawn.

Who decided that one of the conditions subsequent would be the disposition of the assets that you've described, quote, "wholly outside of Dondero's control."

Whose idea was it to put that into

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2 the agreement?

3 A. It was -- it was mine. And, again,  
4 it was probably unnecessary complexity, but...

5 Q. And why did you want that piece of  
6 it into the agreement?

7 A. MGM ended up being a success story,  
8 but the value of MGM and the prospects of MGM  
9 have bounced around considerably over the last  
10 decade. And we never owned more than 17 or  
11 18 percent and there was a 32 percent holder,  
12 and Carl Icahn was involved at different points  
13 in time. There was definitely a chance that,  
14 over our objections, it could have been sold at  
15 a lower price without our support.

16 And as far as Cornerstone was  
17 concerned, there was a half or a majority that  
18 was in the Restoration Fund that had a whole  
19 bunch of outside investors in it; and,  
20 theoretically, that could have been sold  
21 without our -- or against our recommendations.

22 So it was really meant to capture  
23 those two possibilities.

24 Q. Did you tell Frank Waterhouse at any  
25 time about your agreement with Nancy that's

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subject to the conditions subsequent referred to here in Interrogatory No. 1?

A. I don't know if Frank knew the specifics. I think Frank really was aware that the loans could and would likely be forgiven and -- yes. That's all to that answer.

Q. Did you tell him that?

A. Yes, and -- I mean, partly he knew it from the history of Highland, and the structure of the notes are structured in a way that facilitates forgiveness.

MR. MORRIS: I move to strike.

BY MR. MORRIS:

Q. Did you ever tell Frank Waterhouse about the agreement that you reached with Nancy?

MS. DEITSCH-PEREZ: Object to the form.

A. Not -- not the specifics.

BY MR. MORRIS:

Q. Did you ever mention anything about any aspect of your agreement to Nancy -- with Nancy to Frank Waterhouse?

MS. DEITSCH-PEREZ: Object to the

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form.

A. I -- listen, I don't -- I don't remember talking to him about the specifics, but, in general, I -- he -- he -- he was deeply involved in the thought process and the conclusion that the notes were forgiven or going to be for- --

MR. MORRIS: I'm going to move to strike.

BY MR. MORRIS:

Q. And I'm not asking you to get into his head to tell me what you think he knew. I'm asking you about what you told him.

Did you ever tell Mr. Waterhouse that you reached an agreement with Nancy pursuant to which the debtor had agreed not to collect on the notes subject to the conditions subsequent set forth in your answer to Interrogatory No. 1?

MS. DEITSCH-PEREZ: Object to the form.

A. I don't remember. I -- I don't remember enough to say conclusively one way or the other.

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2 BY MR. MORRIS:

3 Q. Do you have any recollection of  
4 telling any employee at Highland at any time of  
5 your agreement with Nancy?

6 MS. DEITSCH-PEREZ: Object to the  
7 form.

8 A. I -- I don't know.

9 BY MR. MORRIS:

10 Q. Okay. Did you tell anybody employed  
11 or representing the debtor at any time of your  
12 agreement with Nancy?

13 MS. DEITSCH-PEREZ: Object to the  
14 form.

15 A. Not that I -- not that I recall.  
16 Again, I didn't think there was a reason to,  
17 initially.

18 MR. MORRIS: Can we go to  
19 Exhibit 13, please?

20 (Exhibit 13 introduced.)

21 BY MR. MORRIS:

22 Q. All right. When you were the CEO,  
23 did PricewaterhouseCoopers serve as Highland's  
24 auditors?

25 MS. DEITSCH-PEREZ: Object to the

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2 form.

3 A. At different times they were, and  
4 then KPMG was. I don't remember who it was in  
5 '17.

6 BY MR. MORRIS:

7 Q. Okay. And it's a fact, is it not,  
8 that until at least year-end 2018, Highland had  
9 audited the financial statements prepared for  
10 itself, right?

11 A. I don't know. I wasn't aware they  
12 stopped.

13 Q. Okay. Okay.

14 So, I'm putting up on the screen the  
15 "Consolidated Financial Statements and  
16 Supplemental Information" for the period  
17 December 31st, 2017.

18 Do you see that?

19 A. Uh-huh.

20 MR. MORRIS: And if we can go first  
21 to the page marked 33470, which is, I  
22 think, the --

23 And is this -- does this refresh  
24 your recollection that PWC served as  
25 Highland's independent auditors for the



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2 financial statements prepared for the year  
3 ending December 31st, 2017?

4 MR. MORRIS: If you could scroll  
5 down to the bottom of the page so  
6 Mr. Dondero can see the date.

7 A. Okay.

8 BY MR. MORRIS:

9 Q. Do you see that?

10 A. If you're asking me to agree that it  
11 was Pricewaterhouse, yes, I agree.

12 Q. And do you see that they signed  
13 their letter on May 18th, 2018? Do you see  
14 that?

15 A. Yeah.

16 Q. And do you see, towards the top of  
17 the page, there's a statement about  
18 "Management's Responsibility for the  
19 Consolidated Financial Statements"?

20 A. Yes.

21 Q. And that's a pretty standard clause  
22 that auditors include in audited financial  
23 statements, in your experience; isn't that  
24 right?

25 A. Yes.

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2 MR. MORRIS: Can we go to the  
3 page -- the next page, 3471?

4 BY MR. MORRIS:

5 Q. This is the Consolidated Balance  
6 Sheet for the period December 31, 2017, and  
7 it's been redacted except to show "Notes and  
8 other amounts due from affiliates." Do you see  
9 that?

10 A. Uh-huh.

11 Q. When you were the CEO, did Highland  
12 carry the Notes and Other Amounts Due from  
13 Affiliates as assets on its balance sheet?

14 A. Yes.

15 Q. Okay. And that's what's reflected  
16 on this page; is that correct?

17 A. I mean, that's what the heading  
18 says, yes.

19 Q. Okay.

20 MR. MORRIS: Can we go to Bates  
21 number 33499.

22 (Scrolling.)

23 BY MR. MORRIS:

24 Q. And you're aware, are you not, that  
25 in the Notes to the financial statements, PWC

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2 described all of the notes and other amounts  
3 that were due to affiliates -- due from  
4 affiliates?

5 MS. DEITSCH-PEREZ: Object to the  
6 form.

7 A. Yes.

8 BY MR. MORRIS:

9 Q. And were you aware that in the  
10 financial statements prepared for Highland for  
11 the period ending December 31st, 2017, that PWC  
12 included in its notes amounts due from Highland  
13 Capital Management Fund Advisors, L.P.?

14 A. The 0.2 million in the first  
15 sentence, is that your question?

16 Q. Yes. You know, the whole -- who at  
17 Highland was responsible for providing  
18 information to PWC relating to Notes and Other  
19 Amounts Due from Affiliates?

20 A. The accounting department.

21 Q. And who was the head of the  
22 accounting department as of the end of 2017?

23 A. Frank Waterhouse.

24 Q. And did Frank Waterhouse remain the  
25 head of the accounting department until at

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least the end of 2020, to the best of your knowledge?

A. Yes.

Q. And when did Frank Waterhouse become the head of the accounting department?

A. A few years earlier.

Q. So, to the best of your recollection, Frank Waterhouse has been the head of the accounting department on a continuous basis from the period approximately 2015 until the end of 2020; is that right?

A. If not earlier, but yes. But I don't know the dates.

Q. Okay.

MR. MORRIS: Can we scroll down to the next to the last paragraph there, the one that refers to Mr. Dondero? There you go.

BY MR. MORRIS:

Q. Do you see that, according to this financial report, you "did not issue any new promissory notes to the Partnership" during the year 2017?

A. Yeah.

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2 Q. And to the best of your  
3 recollection, was that accurate?

4 A. Yes.

5 Q. Okay. And to the best of your  
6 recollection, was it also accurate that as of  
7 the end of 2017, the total interest and  
8 principal due on an -- on outstanding  
9 promissory notes was approximately 14 and a  
10 half million dollars and was payable in annual  
11 installments throughout the term of the note?

12 A. Yes.

13 Q. And prior to your execution of the  
14 demand notes, do you recall that you had made,  
15 in favor of Highland, certain term notes?

16 A. I don't -- I don't recall.

17 Q. Do you remember having to make  
18 payments to Highland to satisfy the terms of  
19 any notes prior to 2018?

20 A. I can't recall. I didn't refresh --  
21 I didn't refresh myself on anything else, on  
22 any other notes for this deposition.

23 Q. Okay. But looking at this  
24 paragraph, is there anything about it that you  
25 currently believe is inaccurate or incorrect?

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2 MS. DEITSCH-PEREZ: Object to the  
3 form.

4 A. I -- I don't know. I don't know.

5 BY MR. MORRIS:

6 Q. Okay. We can scroll through the  
7 entire page, if you would like, but I just --  
8 I'll ask the question first, and then you tell  
9 me what you need to read.

10 Do you recall whether  
11 PricewaterhouseCoopers' audited financial  
12 statements ever disclosed the forgiveness of  
13 any loan ever made by Highland to you or any of  
14 its employees?

15 MS. DEITSCH-PEREZ: Object to the  
16 form.

17 A. I don't -- I don't know.

18 BY MR. MORRIS:

19 Q. Do you have a recollection of any?

20 A. I don't have a recollection --  
21 recollection of any. As a CPA, I'm not sure  
22 it's required until it's forgiven, but I'm not  
23 the expert. I can't remember seeing it or not  
24 seeing it.

25 Q. Did the debtor make --

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2 MR. MORRIS: You know what? Let's  
3 look -- let's look at each of these. We  
4 can start with the bottom of the page.

5 BY MR. MORRIS:

6 Q. Can you identify any of the makers  
7 of the notes that are referred to in this  
8 section that are not directly or indirectly  
9 owned or controlled by you, other than  
10 Mr. Okada?

11 So, if we start at the top, is  
12 Highland Capital Management Fund Advisors,  
13 L.P., an entity that is either directly or  
14 indirectly owned or controlled by you?

15 A. Yes.

16 Q. NexPoint Advisors, L.P., the next  
17 paragraph, is that an entity that is directly  
18 or indirectly owned or controlled by you?

19 A. Yes.

20 Q. HCRE Partners, LLC, is that an  
21 entity that is directly or indirectly owned or  
22 controlled by you?

23 A. Yes.

24 Q. Highland Capital Management  
25 Services, Inc., is that an entity that is

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2 directly or indirectly owned or controlled by  
3 you?

4 A. Yes.

5 Q. All right. And you're the subject  
6 of the next paragraph, right?

7 The next paragraph relates to Mark  
8 Okada. Are you aware of any loan that was ever  
9 made by Highland to Mr. Okada that was  
10 forgiven?

11 A. I don't know.

12 Q. Okay.

13 MR. MORRIS: Can we go to the next  
14 paragraph, please?

15 BY MR. MORRIS:

16 Q. There's a reference to The Dugaboy  
17 Investment Trust. Do you see that?

18 A. Yes.

19 Q. Either your sister or Mr. Scott have  
20 served as the sole trustee of Dugaboy since the  
21 time it was created; is that correct?

22 MS. DEITSCH-PEREZ: Object to the  
23 form.

24 A. I -- I don't know.

25 BY MR. MORRIS:



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2 Q. Do you recall anybody at any time  
3 serving as the trustee of The Dugaboy  
4 Investment Trust other than Nancy or Mr. Scott?

5 MS. DEITSCH-PEREZ: Object to the  
6 form.

7 A. I -- I don't remember.

8 BY MR. MORRIS:

9 Q. Are you the lifetime beneficiary of  
10 The Dugaboy Investment Trust?

11 A. Yes.

12 Q. And have you been -- withdrawn.

13 Are you the sole lifetime  
14 beneficiary of The Dugaboy Investment Trust?

15 MS. DEITSCH-PEREZ: Object to the  
16 form.

17 A. I believe so.

18 BY MR. MORRIS:

19 Q. Okay. And has that been true since  
20 the time The Dugaboy Investment Trust was  
21 created?

22 MS. DEITSCH-PEREZ: Object to the  
23 form.

24 A. I don't know for sure.

25 BY MR. MORRIS:

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2 Q. Okay. The next paragraph refers to  
3 a Contribution Agreement. Do you see that?

4 A. Yes.

5 Q. Are you familiar who the affiliated  
6 trust is that entered into the Contribution  
7 Agreement?

8 A. No. I'm willing to be refreshed,  
9 but I don't remember.

10 Q. Is it the Hunter Mountain Investment  
11 Trust?

12 A. It could be.

13 Q. Can you think of any other  
14 affiliated trust other than Hunter Mountain who  
15 carried a note receivable in the amount of  
16 \$63 million due to the partnership?

17 A. No.

18 Q. Do you directly or indirectly own or  
19 control the Hunter Mountain Trust?

20 A. No.

21 Q. Let's go -- do you have any interest  
22 in the Hunter Mountain Trust?

23 A. No.

24 Q. Directly or indirectly?

25 A. No.

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2 MR. MORRIS: Can we go to 33510,  
3 please?

4 (Scrolling.)

5 BY MR. MORRIS:

6 Q. Just to refresh your recollection,  
7 PricewaterhouseCoopers's letter is dated  
8 May 18th, 2018.

9 And you see there, note 16 refers to  
10 "Subsequent Events." Do you see that?

11 A. Yep.

12 Q. So, sometime between January 1st and  
13 May 18, 2018, which is the report date,  
14 PricewaterhouseCoopers is disclosing that you  
15 issued promissory notes in the amount of  
16 \$11.7 million. Do you see that?

17 A. Yes.

18 Q. Do you believe that was true and  
19 accurate at the time? Is that your  
20 recollection?

21 A. Yes.

22 Q. Now, of the three notes that we  
23 looked at, only one of them was issued before  
24 May 18, 2018. That was the 2 and a half  
25 million-dollar note.

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2 Do you remember that?

3 I apologize. Withdrawn.

4 That was the 3.825 million-dollar  
5 note.

6 Do you remember that?

7 A. Okay. Yes.

8 Q. Okay. So, if that note was 3. --  
9 let's just call it roughly \$3.9 million, does  
10 that mean that there were \$7.8 million of other  
11 notes that you made in favor of Highland during  
12 the first five months of 2018?

13 MS. DEITSCH-PEREZ: Object to the  
14 form.

15 A. Yeah, I think you got the wrong --  
16 well, you're -- I'm not the accounting  
17 department. I'm not the auditor. My comment  
18 would be our financial statements have always  
19 been -- our audited financial statements have  
20 always been extremely accurate and  
21 Pricewaterhouse and KPMG literally do a hundred  
22 percent sampling of all transactions.  
23 Everything is reflected accurately in the  
24 financials, and there's no missing note or  
25 misstated note or unequal amount, or whatever.

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2 And I refuse to go in that direction just  
3 because I don't know the details.

4 BY MR. MORRIS:

5 Q. I appreciate that, sir, and I didn't  
6 mean to take you into that direction. I'm just  
7 asking you if you know what accounts for the  
8 difference between the \$11.7 million stated and  
9 the 3.825 million-dollar note that we looked at  
10 as Exhibit Number 1 that was tendered by you on  
11 February 2nd, 2018. That's all.

12 A. I -- I don't know. I have no -- I  
13 have no idea.

14 Q. Okay. In the course of the audit,  
15 you personally sign management representation  
16 letters, right?

17 A. Usually at the end.

18 Q. Yeah.

19 MR. MORRIS: So can we call the next  
20 exhibit up, please?

21 (Exhibit 14 introduced.)

22 BY MR. MORRIS:

23 Q. And happy to take a look at it. I'm  
24 going to point you to a couple of things.

25 MR. MORRIS: But if we could go to

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the document, it's page 9 of the document,  
Bates number 33408. All right.

And scroll up to the prior page,  
please. Just looking for the signatures.

BY MR. MORRIS:

Q. All right. Is that your signature  
there, sir?

A. Yeah.

Q. And did you sign this management  
representation letter on behalf of Highland in  
your capacity as the Strand Advisors, Inc.,  
general partner on or about May 18th, 2018?

A. Yeah.

Q. And Frank Waterhouse, is that -- do  
you know that to be his signature below?

A. It resembles it, yes.

Q. Okay. Do you have an understanding  
of why you signed this document?

A. Despite all their auditing and  
double-checking of all source information,  
they -- they want a validation from management,  
also.

Q. And is that standard and customary,  
to the best of your experience?

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2 A. Yes.

3 Q. Okay.

4 MR. MORRIS: Can we go back to the  
5 first page, please?

6 (Scrolling.)

7 BY MR. MORRIS:

8 Q. Do you see in the second paragraph,  
9 the last sentence, there's a reference to  
10 "materiality"?

11 MR. MORRIS: If you can just scroll  
12 down a bit.

13 BY MR. MORRIS:

14 Q. And it says, quote, "Materiality  
15 used for purposes of these representations is  
16 \$2,000,000."

17 Am I reading that correctly?

18 A. Yes.

19 Q. And did you understand that Highland  
20 was to provide to PWC, so that it could prepare  
21 the audited financial statements with  
22 information relating to issues and transactions  
23 that were material, using that definition?

24 A. Yes.

25 MR. MORRIS: Let's go to the next

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2 document.

3 (Exhibit 15 introduced.)

4 BY MR. MORRIS:

5 Q. These are the audited financials for  
6 the period ending December 31st, 2018.

7 MR. MORRIS: And if you could go to  
8 the third page, the one ending in 33424.

9 No, above. Yeah, right there.

10 Do you see PricewaterhouseCoopers  
11 signed the audit letter on June 3rd, 2019?

12 A. Yep.

13 MR. MORRIS: And if we can scroll up  
14 to the top of the page, it has the same  
15 statement concerning "Management's  
16 Responsibility for the Consolidated  
17 Financial Statements" that we looked at  
18 earlier in the 2017 audit, correct?

19 A. Yes.

20 BY MR. MORRIS:

21 Q. Okay. And that's -- looking at it,  
22 that's customary language that auditors include  
23 in audited financial statements, correct?

24 A. Yep.

25 MR. MORRIS: Can we go to the next



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2 page, please?

3 BY MR. MORRIS:

4 Q. Again, you'll see that this is the  
5 Consolidated Balance Sheet for the period  
6 ending December 31st, 2018. Do you see that?

7 A. Yes.

8 Q. And is it accurate that Highland  
9 continued to carry on its balance sheet as an  
10 asset all "Notes and Other Amounts Due from  
11 Affiliates"?

12 A. Yes.

13 MS. DEITSCH-PEREZ: Object to the  
14 form.

15 BY MR. MORRIS:

16 Q. And you knew -- you knew at the time  
17 that the audited financials were finalized that  
18 Highland was carrying on its balance sheet  
19 "Notes and Other Amounts Due from Affiliates,"  
20 correct?

21 A. Yup.

22 Q. Did you personally tell anybody at  
23 PWC in connection with the preparation of the  
24 audited financial statements for 2018 that you  
25 had entered into the agreement with your sister

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2 Nancy in January or February of 2019?

3 MS. DEITSCH-PEREZ: Object to the  
4 form.

5 A. Not that I recall.

6 BY MR. MORRIS:

7 Q. Do you know if anybody told PWC,  
8 prior to the completion of the audited  
9 financial statements for the period ending  
10 December 31st, 2018, of your agreement with  
11 Nancy?

12 MS. DEITSCH-PEREZ: Object to the  
13 form.

14 A. Not that I know of.

15 BY MR. MORRIS:

16 Q. Did you ever instruct anybody to  
17 inform PWC about the agreement you reached with  
18 Nancy in --

19 MS. DEITSCH-PEREZ: Object to the  
20 form.

21 BY MR. MORRIS:

22 Q. -- January --

23 MR. MORRIS: Please let me finish  
24 the question.

25 MS. DEITSCH-PEREZ: You took a

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2 breath. Sorry.

3 MR. MORRIS: Are you finished?

4 MS. DEITSCH-PEREZ: Yes. As I

5 explained, you took a breath, and I thought

6 you were done. Sorry.

7 BY MR. MORRIS:

8 Q. Did you ever instruct anybody to  
9 inform PWC of your agreement that you reached  
10 with Nancy in January or February 2019?

11 MS. DEITSCH-PEREZ: Object to the  
12 form.

13 A. No.

14 MR. MORRIS: Can you please go to  
15 page 33451?

16 (Scrolling.)

17 BY MR. MORRIS:

18 Q. And we've got the "Notes and Other  
19 Amounts Due from Affiliates." We had gone  
20 through all of this before and I'm not going to  
21 do it again, but I do want to ask you, sir:  
22 Did you personally approve and authorize each  
23 of the notes that are reflected in the PWC  
24 disclosure concerning Notes and Other Amounts  
25 Due from Affiliates?

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2 MS. DEITSCH-PEREZ: Object to the  
3 form.

4 A. Repeat the question.

5 Did I personally approve? Was that  
6 the question or --

7 BY MR. MORRIS:

8 Q. Yes. Withdrawn.

9 I'll ask a different question.

10 And I'm happy to give you the time  
11 needed to look at the full disclosure, but are  
12 you aware of any note or other amount due from  
13 affiliate that you didn't approve and  
14 authorize?

15 A. I'm not aware.

16 MR. MORRIS: Okay. If we could just  
17 focus in on that bottom paragraph relating  
18 to Mr. Dondero.

19 BY MR. MORRIS:

20 Q. So there's a reference there to your  
21 having "issued promissory notes to the  
22 Partnership in the aggregate amount of  
23 \$14.9 million" during 2018.

24 Do you see that?

25 A. Yes.

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2 Q. That would include the three notes  
3 at issue in this lawsuit; is that right?

4 MS. DEITSCH-PEREZ: Object to the  
5 form.

6 A. (No response.)

7 BY MR. MORRIS:

8 Q. Let me ask a different question.

9 The three -- the three notes at  
10 issue in this lawsuit were all issued in 2018,  
11 correct?

12 A. Yes.

13 Q. Okay. Do you have a recollection as  
14 to what notes account for the difference  
15 between the \$8.8 million or so that's at issue  
16 in this lawsuit and the \$14.9 million  
17 referenced in this disclosure?

18 A. I don't, other than that -- I  
19 believe the audit is accurate and, you know,  
20 there could have been principle or interest  
21 paydowns. I don't know the reason for the  
22 difference.

23 Q. This disclosure, as it pertains to  
24 you, doesn't mention any oral agreement, does  
25 it?

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2 A. No.

3 Q. And it doesn't mention any amendment  
4 to any of the notes, correct?

5 A. No.

6 Q. It doesn't describe any conditions  
7 that have been placed on the collectability of  
8 the notes from you, correct?

9 A. No.

10 Q. It doesn't state that the notes  
11 might be forgiven upon some conditions  
12 subsequent, correct?

13 A. No, it does not.

14 MR. MORRIS: Can we turn to  
15 page 33461, please?

16 (Scrolling.)

17 BY MR. MORRIS:

18 Q. And these are "Subsequent Events,"  
19 and I just want to look through them --  
20 withdrawn.

21 You understand that these financial  
22 statements are for the period ending  
23 December 31st, 2018, correct?

24 A. Yes.

25 Q. And the agreement that you reached

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with Nancy, to the best of your recollection,  
occurred in January or February 2019, correct?

(Simultaneous conversation.)

A. Yes --

MS. DEITSCH-PEREZ: Object to the  
form.

THE REPORTER: I didn't hear an  
answer.

A. Repeat the question again, just in  
case.

BY MR. MORRIS:

Q. Sure. The agreement that you -- the  
agreement that you reached with Nancy on behalf  
of Highland was an agreement that was reached  
in January or February 2019, correct?

A. Was in -- the last was in January or  
February of '19, yes. Yes.

Q. Okay. So I just want to show you  
the entirety of the "Subsequent Events" because  
they cover the period from December 31st, 2018,  
until the report date of June 3, 2019.

MR. MORRIS: If we could just look  
at that.

BY MR. MORRIS:

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2 Q. Is there any reference made to the  
3 agreement that you reached with Nancy in  
4 January or February 2019?

5 A. No.

6 MS. DEITSCH-PEREZ: And I just want  
7 to object for the record that we asked the  
8 debtor for all of the Highland financial --  
9 audited financial statements. We got  
10 highly redacted ones where the debtor has  
11 clearly left unredacted only those things  
12 it wanted to use while denying Mr. Dondero  
13 the unredacted copies. So we do not have  
14 here, for him to look at, the unredacted  
15 Highland audited financial statements.

16 MR. MORRIS: But this is the only  
17 portion of the document -- well, I'm not  
18 going to argue.

19 MS. DEITSCH-PEREZ: Yes. You showed  
20 us what you wanted to show him in an  
21 unredacted (audio distortion) gave him  
22 fully redacted copies. I understand that.

23 MR. MORRIS: Yeah, and I'll be happy  
24 to submit a unredacted copy to the Judge  
25 under seal so that she can see whether or



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2       not there's any other aspect of the  
3       financial statements that --

4               MS. DEITSCH-PEREZ:   That's fine.

5               MR. MORRIS:   -- pertain to the  
6       notes.

7               Give me a break.   Stop.

8               MS. DEITSCH-PEREZ:   I know.

9       Litigation isn't a one-way -- one-way  
10      disco.

11              MR. MORRIS:   Okay.   All right.

12              The next document, please.

13              THE WITNESS:   How are we doing on  
14      time?

15              MR. MORRIS:   We're doing pretty  
16      well.   I think we're going to fit within --  
17      we're not quite an hour back on, but I'm  
18      confident that we'll fit within the one- to  
19      two-hour -- we'll be done within an hour.  
20      That's my point.

21              THE WITNESS:   Okay.   I'm going to  
22      give a hard stop at 2:00.   Okay?

23              MR. MORRIS:   You can do whatever you  
24      want.   If we're not finished, we'll just  
25      have to figure out a time to come back.   So

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let's get through as much as we can, and  
we'll see where we are.

BY MR. MORRIS:

Q. The next document is the management  
representation letter.

(Exhibit 16 introduced.)

BY MR. MORRIS:

Q. And I would just ask you to look at,  
I guess, page 33419 and just confirm for me  
that that's your signature.

A. Yes.

Q. Okay. And this contains the same  
representations that you made to PWC that we  
looked at in the earlier management rep letter,  
right?

A. Yes.

Q. Okay. Let's look at the next  
document, please.

(Exhibit 17 introduced.)

BY MR. MORRIS:

Q. So PWC issues the audited financials  
in June of 2019, and then Highland files for  
bankruptcy in October.

Do I have that right?

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2 A. Yes.

3 Q. And at the time Highland filed for  
4 bankruptcy, you were the president and CEO of  
5 Highland, correct?

6 A. Yes.

7 Q. And you personally authorized  
8 Highland's bankruptcy filing, correct?

9 A. On Pachulski's recommendation.

10 Q. But you're the only person who  
11 authorized the filing; is that correct?

12 A. Yes.

13 Q. And did you understand -- you have  
14 familiarity with bankruptcy proceedings, right?

15 MS. DEITSCH-PEREZ: Object to the  
16 form.

17 A. Not this kind of bankruptcy, but,  
18 yes, we have experience in bankruptcies.

19 BY MR. MORRIS:

20 Q. And you had experience in the Acis  
21 bankruptcy, for example, correct?

22 A. Yes.

23 MS. DEITSCH-PEREZ: Object to the  
24 form.

25 BY MR. MORRIS:

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Q. And you understand that debtors in bankruptcy have to make certain disclosures; is that right?

MS. DEITSCH-PEREZ: Object to the form.

BY MR. MORRIS:

Q. You can answer.

A. Yes.

Q. And you understand that the purpose of the disclosures is to give interested parties an opportunity to review the financial information relating to the debtors, right?

MS. DEITSCH-PEREZ: Object to the form.

A. Generally.

BY MR. MORRIS:

Q. The debtor is supposed to be transparent. Is that a statement you would agree with?

A. I'd agree the debtor is supposed to be.

Q. So, are you aware that the debtor filed certain schedules in connection with the bankruptcy case?

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2 A. I'm sure they filed many schedules.

3 Q. And did you -- did you review the  
4 debtor's schedules before they were filed?

5 A. No.

6 Q. All right. So, here is a summary of  
7 the debtor's assets and liabilities that was  
8 filed in December -- on December 12th, 2019.

9 Do you see the timeline at the top?

10 A. Yes.

11 Q. And you were still in control of the  
12 debtor at that time, correct?

13 A. Yep.

14 Q. And was Mr. Waterhouse responsible  
15 for preparing the debtor's Summary of Assets  
16 and Liabilities on behalf of Highland at that  
17 time?

18 A. I -- I don't know whether DSI was in  
19 control at that point. I don't know.

20 Q. Did DSI rely on Mr. Waterhouse and  
21 the accounting team for the information that  
22 was used to create the debtor's disclosures?

23 MS. DEITSCH-PEREZ: Object to the  
24 form.

25 BY MR. MORRIS:

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2 Q. Withdrawn.

3 To the best of your knowledge, did  
4 DSI rely on Mr. Waterhouse and the accounting  
5 team at Highland in order to prepare the  
6 debtor's schedules and financial disclosures?

7 MS. DEITSCH-PEREZ: Object to the  
8 form.

9 A. I don't know.

10 BY MR. MORRIS:

11 Q. Did you ever discuss with  
12 Mr. Waterhouse the debtor's financial  
13 disclosures during the bankruptcy case?

14 A. Nope.

15 Q. Did you ever look at the Summary of  
16 Assets and Liabilities that was filed with the  
17 Court in December 2019?

18 A. Nope.

19 MR. MORRIS: Turn to the second  
20 page, please. Let's just go down right --  
21 right there.

22 BY MR. MORRIS:

23 Q. Do you see in part 11 -- part 11  
24 pertains to all other assets and in Item  
25 Number 71, there's a reference to "Notes

1 Dondero - 5-28-2021

2 Receivable."

3 A. Yep.

4 Q. And do you see that the Notes  
5 Receivable are for an aggregate amount of  
6 approximately \$150 million?

7 A. Yep.

8 Q. And it refers to Exhibit D. Do you  
9 see that?

10 A. Yes.

11 Q. All right.

12 MR. MORRIS: Can we turn -- go to  
13 the next page?

14 BY MR. MORRIS:

15 Q. And exhibit -- this page is Exhibit  
16 D.

17 Do you see that?

18 A. Yes.

19 Q. And this shows an aggregate amount  
20 of -- the face amount of notes to be the same  
21 \$150.3 million that we just saw, correct?

22 MS. DEITSCH-PEREZ: Object to the  
23 form.

24 BY MR. MORRIS:

25 Q. We can go back and look, if you

1 Dondero - 5-28-2021

2 want.

3 A. It seems to tie.

4 Q. Okay. And it was disclosed on the  
5 docket in the bankruptcy case that you  
6 personally had made Notes Receivable  
7 outstanding in the approximate amount of  
8 \$9.3 million. Do you see that?

9 A. Yes.

10 Q. Okay.

11 MR. MORRIS: Can we just go to the  
12 top? I want to just show the date.

13 BY MR. MORRIS:

14 Q. It's December 13. That's the date  
15 that this disclosure is made. Do you see that?

16 A. Yes.

17 Q. And there's a footnote there, number  
18 [1], that says "Doubtful or Uncollectible  
19 accounts are evaluated at year end." Do you  
20 see that?

21 A. Yes.

22 Q. Now, nothing on this document shows  
23 any of the notes as being doubtful or  
24 uncollectible, correct?

25 A. Correct.



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2 Q. Do you know if the debtor's  
3 schedules were ever amended after  
4 December 13th, 2019, to reflect "Doubtful or  
5 Uncollectible" Notes Receivable?

6 MS. DEITSCH-PEREZ: Object to the  
7 form.

8 A. Yeah. I believe the Hunter Mountain  
9 56 was written off.

10 BY MR. MORRIS:

11 Q. Okay. Anything else?

12 MS. DEITSCH-PEREZ: Object to the  
13 form.

14 A. I -- I don't know.

15 BY MR. MORRIS:

16 Q. Okay. Did you ever ask anyone to  
17 amend the debtor's schedules to reflect any  
18 Doubtful or Uncollectible receivable that's set  
19 forth on this page?

20 A. I did not.

21 Q. Okay.

22 MR. MORRIS: La Asia, I'm actually  
23 going to just skip the next exhibit. And  
24 if we could go to the one that you and I  
25 had marked as 19. We'll just mark it as 18

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for purposes of the deposition.

MS. DEITSCH-PEREZ: I think that's confusing. I don't mind if you just mark 18 as "omitted." I would want a sheet with "18 omitted." That way, your numbering can stay the same.

MR. MORRIS: Okay. That's fine. Thank you. So we'll mark 18 as "omitted", and this will be 19.

(Exhibit 19 introduced.)

BY MR. MORRIS:

Q. Are you aware of -- that the debtor filed disclosures called Statements of Financial Affairs, often referred to as SoFAs?

A. I've heard of the form before, yes.

Q. Did you ever review the debtor's SoFAs?

A. No.

Q. So, do you know who was responsible at Highland for preparing the debtor's SoFAs?

A. No.

Q. Would it have been -- would -- whoever it was, would that person have either been or reported to Frank Waterhouse, as the

1 Dondero - 5-28-2021

2 CFO?

3 A. I'm sorry. Can you repeat that one  
4 more time?

5 Q. I appreciate the fact that you  
6 don't -- you can't identify the person who  
7 prepared the SoFAs; but within the  
8 organizational structure of Highland during the  
9 time that you were the CEO, would the person  
10 have been either Frank Waterhouse or somebody  
11 who reported to Frank Waterhouse?

12 A. Or DSI.

13 Q. Okay.

14 MR. MORRIS: Can we go to page 2,  
15 please.

16 (Scrolling.)

17 BY MR. MORRIS:

18 Q. Do you see at number 4 here, there's  
19 a reference to payments made to insiders within  
20 a year of the bankruptcy case?

21 A. Yup.

22 Q. Are you aware -- withdrawn.

23 Were you aware in December 2019 that  
24 Highland was going to disclose all payments  
25 made to insiders within a year of the

1 Dondero - 5-28-2021

2 bankruptcy case?

3 A. No.

4 MR. MORRIS: Let's go to page 19 of  
5 34, please.

6 (Scrolling.)

7 MR. MORRIS: If we could, scroll  
8 down near the bottom.

9 BY MR. MORRIS:

10 Q. You'll see that there's two entries  
11 for Highland Capital Management Fund Advisors.  
12 Do you see that?

13 A. Yup.

14 Q. And in May 2019, the debtor paid  
15 Highland Capital Management Fund Advisors the  
16 aggregate amount of \$7.4 million. Am I reading  
17 that correctly?

18 A. Yes.

19 Q. Okay. And those payments were -- in  
20 exchange for those payments, Highland received  
21 two promissory notes, correct?

22 MS. DEITSCH-PEREZ: John, I'm going  
23 to object. You're straying from the  
24 subject of this adversary and going into  
25 another, and I'm really not comfortable

1                   Dondero - 5-28-2021

2       with that since he's only prepared for  
3       his -- his -- for this proceeding and has  
4       not refreshed himself on anything else.  
5       So, this is outside of what the scope of  
6       this deposition ought to be.

7               MR. MORRIS:   Okay.   So you have two  
8       choices, Deborah:   You can either state  
9       your objection, "beyond the scope," or you  
10      can direct the witness not to answer.  
11      Which would you like to do?

12             MS. DEITSCH-PEREZ:   I am going to  
13      state my objection that it's beyond the  
14      scope, but I'm asking you because -- as a  
15      matter of fairness, that you restrain  
16      yourself and limit your deposition to this  
17      adversary proceeding --

18             MR. MORRIS:   Okay.   I appreciate --

19             MS. DEITSCH-PEREZ:   -- and not --

20             (Simultaneous conversation.)

21             MS. DEITSCH-PEREZ:   And if the  
22      witness isn't prepared to answer these  
23      questions, it's not fair that you proceed  
24      on them.

25             MR. MORRIS:   Okay.   So I'll just say

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that for a couple of questions to ask the former CEO about a 7.4 million-dollar payment made to an affiliate that he owns or controls, I'm going to ask you to give me a little latitude.

BY MR. MORRIS:

Q. Mr. Dondero, were those two payments backed up by promissory notes in favor of the debtor, to the best of your knowledge?

A. I don't know.

Q. Okay.

MR. MORRIS: Let's go to the next page, please.

Can we go towards the middle of the page. Right there. That's fine.

BY MR. MORRIS:

Q. Do you see your name, James Dondero, there?

A. Yes.

Q. And you were paid \$3.75 million within a year of the bankruptcy, correct?

A. Yes.

Q. Who determined that you should -- who made the decision for Highland to pay you

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that amount?

A. Me? I don't know.

Q. Is there anybody else who had the authority to determine your compensation prior to the petition date, other than yourself?

A. Especially -- besides myself -- okay. Let me answer that question first.

The Class A -- majority Class A holders can, and then I can.

Q. Anybody else?

A. Not that -- not that I know.

Q. In practice, did anybody other than you set your compensation?

A. In practice, yes, sometimes majority Class A did.

Q. And at any time prior to the petition date, can you think of an instance where the majority of the Class A refused to compensate you in the manner in which you wanted?

A. There was -- no, because there was no reason to because there was plenty of head room in all the agreements and compared to market levels.

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2 MR. MORRIS: Let's go to the next  
3 document, please.

4 (Exhibit 20 introduced.)

5 BY MR. MORRIS:

6 Q. Are you aware that, during the  
7 course of the bankruptcy proceeding, the  
8 debtor, in addition to the schedules and SoFAs,  
9 also filed every month a document called the  
10 "Monthly Operating Report"?

11 A. I'm not aware, specifically.

12 Q. Did you ever review any of the  
13 debtor's Monthly Operating Reports?

14 A. Not that I can recall.

15 Q. Okay.

16 MR. MORRIS: We can scroll down a  
17 bit.

18 BY MR. MORRIS:

19 Q. You see there's -- there's two  
20 signatures here: One electronic, one  
21 handwritten, both dated December 2nd. Do you  
22 see that Brad Sharp has signed as an authorized  
23 individual as the Chief Restructuring Officer?

24 A. Yup.

25 Q. Okay. And then below that, there's



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the electronic signature of Mr. Waterhouse. Do you see?

A. Yes.

Q. Okay. Were -- to the best of your knowledge as the CEO at the time, were Mr. Sharp and Mr. Waterhouse authorized to sign and file Monthly Operating Reports with the Court?

A. Again, it's not my sphere of knowledge. It looks like -- individually or jointly, I -- I don't have a comment.

Q. I'm just asking you, as the CEO, did you expect Mr. Waterhouse and Mr. Sharp to take care of all financial disclosures required under the bankruptcy code?

A. Yes.

Q. And did you expect them to do that completely, transparently and accurately?

A. Yes.

Q. Do you have any reason to believe that they failed to do so?

A. Not that I'm aware.

MR. MORRIS: Can we go to page 6 of

11?

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2 (Scrolling.)

3 BY MR. MORRIS:

4 Q. You haven't seen this document  
5 before; is that right?

6 A. I do not believe so.

7 Q. Okay. But you see that it was filed  
8 in late January 2020, but it was signed in  
9 December, right?

10 A. Yeah.

11 Q. Okay. And do you see that among the  
12 assets listed are amounts "Due from  
13 affiliates"?

14 A. Yep.

15 Q. And do you have any reason to  
16 believe that the amounts due from affiliates  
17 are anything other than the same notes and  
18 amounts due that we saw in the audited  
19 financial statements?

20 MS. DEITSCH-PEREZ: Object to the  
21 form.

22 A. I don't know.

23 BY MR. MORRIS:

24 Q. Okay.

25 THE WITNESS: I do look at this and

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get wistful. You guys should be ashamed of yourselves, what you've done to this company.

MR. MORRIS: I move to strike.

Can we take a look at footnote (1), please?

BY MR. MORRIS:

Q. Do you see that it "Includes various notes receivable at carrying value"?

Do you have any understanding of what that --

MS. DEITSCH-PEREZ: You didn't state the whole sentence, John. Please, if you're going to point him to things, read him the whole sentence.

BY MR. MORRIS:

Q. Sir, do you have any understanding as to what footnote (1) refers to or means?

A. It says what it says.

Q. Okay.

MR. MORRIS: Let's look at the next document, please.

(Exhibit 21 introduced.)

MR. MORRIS: All right. So if you

1 Dondero - 5-28-2021

2 could just stop right there.

3 BY MR. MORRIS:

4 Q. This is the Monthly Operating Report  
5 for the period ending November 2019. Do you  
6 see that?

7 A. Yes.

8 MR. MORRIS: Can we scroll down a  
9 bit?

10 BY MR. MORRIS:

11 Q. And that's Mr. Sharp's and  
12 Mr. Waterhouse's signatures, correct?

13 A. Yes.

14 Q. Do you see on this version,  
15 Mr. Sharp is identified as the "Responsible  
16 Party," but Mr. Waterhouse is identified as the  
17 "Preparer"?

18 A. Yes.

19 Q. Do you recall ever telling Mr.  
20 Waterhouse, in his capacity as the preparer of  
21 Monthly Operating Reports, that there was  
22 anything inaccurate in any Monthly Operating  
23 Report filed by the debtor?

24 A. No.

25 Q. Do you recall ever telling

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Mr. Sharp, as the responsible party, that there was anything inaccurate in any monthly -- Monthly Operating Report filed by the debtor?

A. No.

MR. MORRIS: Can we go to the next page, please?

(Scrolling.)

THE WITNESS: I'm going to give the 12-minute warning here. I can be back at 4:00, but I'm going to need a couple hours.

MR. MORRIS: I'm trying to finish up, okay?

THE WITNESS: Okay.

MR. MORRIS: I'd rather not come back, to be honest with you.

Can we go to the next page, please?

BY MR. MORRIS:

Q. Again, the debtor reported that the amounts due from affiliates were assets of the debtor's estate, correct?

A. Yep.

Q. Do you -- do you have any issue with the fact that the debtor reported the notes, including your own notes, as assets of the

Dondero - 5-28-2021

estate?

MS. DEITSCH-PEREZ: Object to the  
form.

A. Until they're forgiven, they're bona  
fide notes.

BY MR. MORRIS:

Q. And you don't think the "conditions  
subsequent" agreement that you entered into  
with Nancy calls into question whether the  
debtor would ever recover on their notes that  
you issued to them?

MS. DEITSCH-PEREZ: Object to the  
form.

A. Again, I don't believe it's material  
or GAAP, is my understanding.

BY MR. MORRIS:

Q. Well, almost a third of the debtor's  
assets are notes "Due from affiliates," right?

A. You have to back out Hunter  
Mountain, and you have to back out -- you have  
to back out about 80 million to get to the 70  
million of affiliated notes; and then, from  
there, you have to back out 60 of them to get  
to the 9 million.

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2 MS. DEITSCH-PEREZ: Mr. Morris,  
3 please don't make faces at Mr. Dondero.

4 BY MR. MORRIS:

5 Q. Why -- why are we backing out Hunter  
6 Mountain?

7 A. I think the Hunter Mountain -- there  
8 were notes going both ways, but I think the  
9 Hunter Mountain is out of the estate, I  
10 believe.

11 Q. But Hunter Mountain -- the debtor  
12 held notes that were made by Hunter Mountain in  
13 the approximate amount of \$60 million, right?

14 A. But subsequent to these dates, I  
15 think -- I think they realized it was just a  
16 cross-transaction. There were dues and  
17 payables that were essentially equal from  
18 Hunter Mountain, so I think Hunter Mountain  
19 came out of that.

20 Q. Isn't it -- isn't it a fact that  
21 they wrote them off because they didn't believe  
22 they were collectible?

23 A. Yeah, because the payment on those  
24 notes depended upon Highland honoring its  
25 agreements to Hunter Mountain, which Highland

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had no intention of doing. So, there's no ability for Hunter Mountain to pay Highland.

Q. Does Highland -- does Hunter Mountain today have the ability to pay back any of the \$60 million that it -- that was reflected in the notes?

MS. DEITSCH-PEREZ: Object.

A. No, not that I know of but --

BY MR. MORRIS:

Q. Okay.

MS. DEITSCH-PEREZ: And, Mr. Morris, once again, I think we're straying from this adversary.

MR. MORRIS: Can we go to page 5 of 9, please?

(Scrolling.)

MR. MORRIS: Above that, I think. Next page, 5 of 9. We must be looking at the wrong exhibit.

Is the one that was marked 22? No, it's the next -- I believe it's the next document.

Let's pull up the next document, please.



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2 (Exhibit 22 introduced.)

3 MR. MORRIS: Yeah, that's it.

4 Go to page 5, please. Thank you.

5 BY MR. MORRIS:

6 Q. Do you see that box there? It says  
7 "Non-Operating Receipts - Other."

8 A. Yes.

9 Q. Okay. And do you understand that  
10 that shows that, in December 2019, while you  
11 were still personally in control of the debtor,  
12 that certain payments of "principle or  
13 interest" were made with respect to notes made  
14 in favor of the debtor?

15 A. Yes.

16 Q. Okay. And do you understand that  
17 the one dated December 23rd in the approximate  
18 amount of \$783,000, that was a payment that was  
19 made by you?

20 MS. DEITSCH-PEREZ: Object to the  
21 form.

22 A. If you say so. I don't have a basis  
23 for denying it or confirming it.

24 BY MR. MORRIS:

25 Q. Okay. But it's true, you do recall

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that in December 2019, after the petition date,  
while you were still in control of the debtor,  
that certain payments of principal and interest  
were made on notes that were made in favor of  
the debtor, correct?

MS. DEITSCH-PEREZ: Asked -- asked  
and answered about an hour ago.

BY MR. MORRIS:

Q. You can answer, sir.

A. I believe -- I believe so.

Q. Thank you. Do you recall that in  
connection with its Plan and Disclosure  
Statement, that the debtor prepared a  
Liquidation Analysis?

A. Yes.

MR. MORRIS: Can we call the next  
document up on the screen, please?

(Exhibit 23 introduced.)

MR. MORRIS: And if we can go to the  
next page.

BY MR. MORRIS:

Q. Your lawyers and lawyers acting on  
behalf of entities you own and control or  
otherwise have an interest spent considerable

1 Dondero - 5-28-2021

2 time on the debtor's Liquidation Analysis and  
3 confirmation.

4 Do you remember that?

5 A. I can't -- I can't agree or disagree  
6 with that.

7 BY MR. MORRIS:

8 Q. Okay. Did you personally review the  
9 debtor's Liquidation Analysis?

10 A. Briefly.

11 Q. Okay.

12 MR. MORRIS: Can we go to the next  
13 page, please?

14 BY MR. MORRIS:

15 Q. Do you see that this page contains a  
16 list of "Assumptions"?

17 A. Yes.

18 MR. MORRIS: And can we scroll up a  
19 little further so we can see the date?

20 BY MR. MORRIS:

21 Q. You'll see that on November 24th,  
22 2020, the debtor filed a Liquidation Analysis  
23 that contained, as among the Assumptions,  
24 quote, "All demand notes are collected in the  
25 year 2021." Do you see that?

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2 A. Yes.

3 Q. Did you or anybody acting on your  
4 behalf ever inform the Court that you believed  
5 that assumption was unreasonable?

6 A. I -- I don't know, but I know we've  
7 been fighting the notes consistently through  
8 various mechanisms.

9 Q. Okay. Did you or anybody acting on  
10 your behalf ever inform the Court of your  
11 agreement with Nancy?

12 MS. DEITSCH-PEREZ: Object to the  
13 form.

14 A. Not -- not that I know of.

15 BY MR. MORRIS:

16 Q. Did you ever instruct anybody to  
17 inform the Court that you had an agreement with  
18 Nancy that rendered Assumption C unreasonable?

19 MS. DEITSCH-PEREZ: Object to the  
20 form.

21 A. I did not.

22 MR. MORRIS: Let's look at the last  
23 document, please.

24 (Exhibit 24 introduced.)

25 BY MR. MORRIS:

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2 Q. Do you recall that there came a time  
3 just prior to the confirmation hearing that the  
4 debtor amended its Liquidation Analysis?

5 A. No. Okay. Yes.

6 MR. MORRIS: Okay. And if we could  
7 go to the next page.

8 BY MR. MORRIS:

9 Q. You'll see at the bottom right-hand  
10 corner it's dated January 28th, 2021.

11 MR. MORRIS: We wanted page up but  
12 just -- yeah, page up, the assumptions.  
13 Yeah, right there.

14 BY MR. MORRIS:

15 Q. You see it's dated January 28, 2021?

16 A. Yes.

17 Q. Okay. And let's look at Assumption  
18 C. It's been amended somewhat.

19 And it now says, quote: "All demand  
20 notes are collected in the year 2021; 3 term  
21 notes defaulted and have been demanded based on  
22 default provisions; payment estimated in 2021."

23 Do you see that?

24 A. Yes.

25 Q. Did you or anybody on your behalf

1 Dondero - 5-28-2021

2 ever inform the Court that this assumption was  
3 unreasonable?

4 MS. DEITSCH-PEREZ: Object to the  
5 form.

6 A. Yes. Well, Lynn wrote a letter to  
7 all the counsels, which I think ended up being  
8 put in the Court record, that the notes were  
9 all subject to defenses and could not be  
10 considered unencumbered, I think, if they're  
11 sold, or whatever. He was -- he was -- he --  
12 he realized the attitude towards the notes had  
13 shifted, and he penned something to everybody  
14 and to make the notes so that they couldn't be  
15 sold without notifying people that there were  
16 good defenses to them.

17 BY MR. MORRIS:

18 Q. Did you or anybody acting on your  
19 behalf ever challenge this assumption in  
20 connection with the debtor's confirmation  
21 hearing?

22 MS. DEITSCH-PEREZ: Object to the  
23 form, asked and answered.

24 A. Yeah. I think Lynn's letter  
25 objected to that vehemently. It was just

Dondero - 5-28-2021

ignored.

BY MR. MORRIS:

Q. Do you know anything else --  
anything else you're aware of?

A. I think that's powerful enough.

Q. That's not my question, sir. My  
question is: Are you aware of any other facts  
that you're relying upon to answer my question  
as to whether or not you or anybody acting on  
your behalf informed the Court that Assumption  
C is unreasonable?

MS. DEITSCH-PEREZ: Object to the  
form.

A. Just the Lynn letter. I have no  
other specific awareness.

MR. MORRIS: Thank you very much. I  
have no further questions. Thank you so  
much, folks. Been a pleasure.

MS. DEITSCH-PEREZ: Reserve until  
trial.

(Time Noted: 1:59 p.m.)

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C E R T I F I C A T E  
STATE OF TEXAS       )  
                                  )  
COUNTY OF ELLIS       )

I, Daniel J. Skur, a Notary Public  
within and for the State of Texas, do  
hereby certify:

That JAMES DONDERO, the witness whose  
deposition is hereinbefore set forth, was  
duly sworn by me and that such deposition  
is a true record of the testimony given by  
such witness.

That pursuant to Rule 30 of the Federal  
Rules of Civil Procedure, signature of the  
witness was not reserved by the witness or  
other party before the conclusion of the  
deposition;

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage; and that I am  
in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 28th day of May, 2021.



---

Daniel J. Skur  
Notary Public, State of Texas.  
My Commission Expires 7/7/2022  
TSG Reporting, Inc.  
228 East 45th Street, Suite 810  
New York, New York  
(877) 702-9580



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ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name:

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:	)	
HIGHLAND CAPITAL	)	Case No.
MANAGEMENT, LP,	)	19-34054 L.P.
Debtor,	)	Chapter 11
-----	)	
HIGHLAND CAPITAL MANAGEMENT,	)	
LP,	)	
	)	
Plaintiff,	)	Adversary No.
vs.	)	21-03003-sgi
JAMES D. DONDERO,	)	
Defendant.	)	

Dep. Date: 05/28/2021  
Deponent: JAMES DONDERO

Reason codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

CORRECTIONS:

Pg.	LN.	Now Reads	Should Read	Reason
17	___	___	___	___
18	___	___	___	___
19	___	___	___	___
20	___	___	___	___
21	___	___	___	___
22	___	___	___	___
23	___	___	___	___
24	___	___	___	___
25	___	___	___	___

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\_\_\_\_\_

\_\_\_\_\_  
JAMES DONDERO

SUBSCRIBED AND SWORN BEFORE ME  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.

\_\_\_\_\_  
(Notary Public) MY COMMISSION EXPIRES: \_\_\_\_\_

1 Dondero - 5-28-2021

2 -----I N D E X-----

3 WITNESS: EXAMINATION BY PAGE:

4 JAMES DONDERO

5 Mr. Morris 107

6

7 -----EXHIBITS-----

8 Defendant's PAGE/LINE

9 Exhibit 1 2/2/2020 Promissory Note 108/16  
2 pages

10

11 Exhibit 2 February 2020 Highland 118/21  
Capital Management, L.P.  
Operating Results  
12 12 pages

13 Exhibit 3 8/1/2020 Promissory Note 121/8  
2 pages

14

15 Exhibit 4 8/13/2018 Promissory Note 127/2  
2 pages

16 Exhibit 5 August 2018 Highland 130/14  
Capital Management, L.P.  
Operating Results  
17 9 pages

18

19 Exhibit 6 12/3/2020 Demand Letter 132/11  
3 pages

20 Exhibit 7 Defendant James Dondero's 136/8  
Original Answer  
21 8 pages

22 Exhibit 8 Defendant James Dondero's 158/2  
Objections and Responses  
23 to Highland Capital  
Management, L.P.'s First  
24 Request For Admissions  
6 pages

25

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-----EXHIBITS-----

Defendant's PAGE/LINE

Exhibit 9 Defendant James Dondero's 160/23  
 Objections and Answers to  
 Highland Capital  
 Management, L.P.'s First  
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